





"Cochran, C. Malcolm  
IV"

<Cochran@RLF.com>

02/23/2005 11:16 AM

To: DSchimmel@Shearman.com

cc: GWade@Shearman.com

Subject: Re: Search results

You did not. There was a new list of key words that was developed and submitted to the consultants. You are continuing to drag your feet on this, Mr Schimmel. We will call it to the attention of the court if our requests are not promptly addressed.

Please tell us whether you will review and produce the responsive e documents identified in the limited search performed by your consultant-and when you will do so. Alternatively, please tell us whether you will allow us to do so. Further, when will we have the 105 boxes of hard copy documents to review? You have to date failed to respond to my inquiries in this regard. As for the Debtors hard copy documents, they are available to you in Reston. -

C. Malcolm Cochran, IV  
Richards, Layton & Finger, P.A.  
One Rodney Square  
Wilmington, DE 19801  
Direct Ext. 302.651.7506

-----Original Message-----

From: Daniel Schimmel <DSchimmel@Shearman.com>

To: Cochran, C. Malcolm IV <Cochran@RLF.com>

CC: George J Wade <GWade@Shearman.com>

Sent: Wed Feb 23 11:04:43 2005

Subject: RE: Search results

Malcom:

We gave you that result last Friday.

Daniel

Daniel Schimmel  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
Phone: (212) 848-4608  
Fax: (646) 848-4608

"Cochran, C.  
Malcolm IV"

<DSchimmel@Shearman.com>

<Cochran@RLF.com>

<GWade@Shearman.com>

To: "Daniel Schimmel"

cc: "George J Wade"

Subject: RE: Search results

02/23/2005 09:57  
AM

I am aware of the numbers of documents turned up in connection with your consultant's request that an initial search be focused on just the terms that he considers to be overly broad--i.e., the list below. Frankly, the numbers of documents turned up in a search of those terms do not



Daniel Schimmel  
02/26/2005 07:47 PM

To: Cochran@RLF.com  
cc: George J Wade/NY/NA/ShS@ShSDOMAIN  
Subject: analysis based on plaintiffs' new list of search terms

Malcolm:

On February 18, 2005, you submitted a new list of terms and asked that BCE and Commonwealth Legal conduct another search to evaluate the number of documents that would be retrieved using those terms. Commonwealth Legal conducted that analysis in two steps. First, Commonwealth Legal used a sample of 103,591 documents that were easily searchable. Of those 103,591 documents, 79,334 documents were created between January 1, 2000 and December 31, 2002, the period with respect to which you had requested an analysis. Using the proposed search terms, BCE would retrieve 71,857 documents created in that time period, that is, 90.5% of all the documents created in that period.

Second, Commonwealth Legal conducted a search based on all the available data (hard drives and servers) in the period January 1, 2000 through December 31, 2002. We were again told that using the proposed search terms does not appreciably reduce the total number of responsive documents in the time period. We do acknowledge, however, that using date restrictions helps reduce the number of retrieved documents.

Commonwealth Legal has estimated that it would retrieve approximately 209,000 documents (representing 1.4 to 1.6 million pages of documents) using the proposed search terms in the period January 1, 2000 to December 31, 2002.

We reiterate that the parties should work on a more meaningful and logical method of searching. We have suggested several possibilities, and we urge you to consider them or to propose logical alternatives. We are prepared to discuss this with you at your convenience.

Daniel

Daniel Schimmel  
Shearman & Sterling LLP  
599 Lexington Avenue  
New York, NY 10022  
Phone: (212) 848-4608  
Fax: (646) 848-4608





In The Matter Of:

**Teleglobe Communications  
Corporation, et al.**

Case No. 02-11518 (MFW)

---

Vinyard V. Cooke, Esquire

February 9, 2005

---

Wilcox & Fetzer, Ltd.  
Phone: 302-655-0477  
Fax: 302-655-0497



Case No. 02-11518 (MFW)

Vinyard V. Cooke, Esquire

February 9, 2005

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

-----X  
In re ) Chapter 11  
 )  
TELEGLOBE COMMUNICATIONS ) Jointly Administered  
CORPORATION, et al., ) Bankruptcy Case No.  
 ) 02-11518 (MFW)  
Debtors. )

-----x  
TELEGLOBE COMMUNICATIONS )  
CORPORATION, et al., )  
 )  
Plaintiffs, )  
v. ) C.A. No.  
 ) 04-CV-1266  
BCE INC., MICHAEL T. BOYCHUK )  
MARC A. BOUCHARD, SERGE FORTIN, )  
TERENCE J. JARMAN, STEWART )  
VERGE, JEAN C. MONTY, RICHARD )  
J. CURRIE, THOMAS KIERANS, )  
STEPHEN P. SKINNER, and )  
H. ARNOLD STEINBERG, )  
 )  
Defendants. )

Deposition of the Debtors taken pursuant to Federal Rule of Civil Procedure 30(b)(6) through its designee VINYARD V. COOKE, ESQUIRE at the law offices of Richards, Layton & Finger, One Rodney Square, Third Floor, Wilmington, Delaware, beginning at 10:00 a.m., on Wednesday, February 9, 2005, before Kurt A. Fetzer, Registered Diplomat Reporter and Notary Public.

APPEARANCES:

C. MALCOLM COCHRAN, IV, ESQ.  
RICHARDS LAYTON & FINGER  
One Rodney Square - Third Floor  
Wilmington, Delaware 19801  
For the Debtors/Plaintiffs  
WILCOX & FETZER  
1330 King Street - Wilmington, Delaware 19801  
(302) 655-0477



Case No. 02-11518 (MFW) Tele globe Communications Corporation, et al  
Vinyard V. Cooke, Esquire

February 9, 2005

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1 APPEARANCES: (Cont'd)  
2 JOHN W. SHAW, ESQ.  
3 YOUNG CONAWAY STARGATT & TAYLOR, LLP  
4 The Brandywine Building  
5 1000 West Street - 17th Floor  
6 Wilmington, Delaware 19801  
7 - and -  
8 DANIEL SCHIMMEL, ESQ.  
9 SHEARMAN & STERLING LLP  
10 599 Lexington Avenue  
11 New York, New York 10022-6069  
12 For the Defendants  
13 - - - - -  
14 MR. SCHIMMEL: Please mark this.  
15 (Cooke Deposition Exhibit No. 1 was marked  
16 for identification.)  
17 - - - - -  
18 VINYARD V. COOKE, ESQUIRE,  
19 the deponent herein, having first been  
20 duly sworn on oath, was examined and  
21 testified as follows:  
22 MR. COCHRAN: I would like to note at the  
23 outset Mr. Cooke is a lawyer. He is assistant general  
24 counsel to the debtor companies. As such, whenever  
you take the deposition of a lawyer there can be  
privilege issues that arise.  
We intend to work with you to try to limit  
those and to try to get you the information you're  
entitled to, but I want to state at the outset that we

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1 have no intent to waive attorney-client or work  
2 product privileges and to the extent Mr. Cooke  
3 testifies here in a way that approaches those  
4 concerns, we do not intend, he does not intend, nor do  
5 his clients intend to waive  
6 EXAMINATION  
7 BY MR. SCHIMMEL:  
8 Q. Good morning, Mr. Cooke. We have met before.  
9 I'm Daniel Schimmel of Shearman & Sterling. I'm here  
10 to ask you a few questions today on the topics on this  
11 notice of 30(b)(6) deposition.  
12 A. Okay.  
13 Q. Let me ask you first a preliminary question.  
14 Is there anything this morning that would  
15 prevent you from giving your best testimony today?  
16 A. Not as far as I'm aware.  
17 Q. Okay. Have you seen this notice of Rule  
18 30(b)(6) before?  
19 A. This Exhibit No. 1?  
20 Q. Yes.  
21 A. Let me just take a look. (Reviewing document)  
22 Yes, I have.  
23 Q. Do you understand that you've been designated  
24 as a representative of the debtors to answer questions

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1 relating to the topics listed in Schedule A?  
2 A. Yes, I do.  
3 Q. And are you prepared to do so today?  
4 A. I believe I am.  
5 Q. Can you give me a brief description of your  
6 education, Mr. Cooke, please?  
7 A. I would be happy to. I went to school at the  
8 University of Virginia and graduated in 1982, went  
9 back to law school at Washington & Lee, which is based  
10 in Virginia, graduated in 1991.  
11 Q. Any other post-high school degrees that you  
12 have?  
13 A. No.  
14 Q. Can you give me a brief description of your  
15 employment history from the first job to the present?  
16 A. You mean after college?  
17 Q. Yes.  
18 A. After college I worked for Chemical Bank, which  
19 is based in New York. for three years, three-and-a-  
20 half years, went to law school. came out of law school  
21 in 1991, started working with Hazel & Thomas, which is  
22 a law firm. left Hazel & Thomas and went to a firm by  
23 the name of Tucker, Flyer & Lewis and then left  
24 Tucker, Flyer & Lewis and went to the law firm Kelley,

Page 5

1 Drye & Warren and left Kelley, Drye & Warren to work  
2 for Teleglobe. And I joined Teleglobe in 1999,  
3 September 1999, and have worked there since.  
4 Q. What kind of legal work were you doing at Hazel  
5 & Thomas?  
6 A. I was a litigator.  
7 Q. How many years did you stay there?  
8 A. Three, two or three. I have to say the older I  
9 get the harder it is to remember.  
10 Q. So that would be roughly from 1991 through what  
11 year?  
12 A. '94.  
13 Q. What kind of legal work were you doing at  
14 Tucker, Flyer & Lewis?  
15 A. Also litigation.  
16 Q. And how long did you stay there?  
17 A. Until '98, 1998.  
18 Q. So four years?  
19 A. Right. I might let off a year or two on each  
20 one.  
21 And then from '98 to '99 I was with  
22 Kelley, Drye.  
23 Q. Was Teleglobe a client of Kelley, Drye?  
24 A. Yes, it was.

2 (Pages 2 to 5)

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<p>1 Q. Were you a litigator at Kelley, Drye as well?</p> <p>2 A. Yes, I was. Sorry</p> <p>3 Q. And where were you based at Hazel &amp; Thomas,</p> <p>4 Tucker, Flyer &amp; Lewis and Kelley, Drye?</p> <p>5 A. For Hazel &amp; Thomas I was in Alexandria,</p> <p>6 Virginia, Tucker, Flyer I was in Washington, D.C. and</p> <p>7 Kelley, Drye I was in Washington, D.C.</p> <p>8 Q. At Teleglob who did you report to?</p> <p>9 A. John Brunette.</p> <p>10 Q. And what was Mr. Brunette's titles and</p> <p>11 responsibilities?</p> <p>12 A. When I joined he was general counsel.</p> <p>13 Q. Did you join Teleglob as assistant general</p> <p>14 counsel?</p> <p>15 A. No.</p> <p>16 Q. In what capacity?</p> <p>17 A. I was senior counsel, I believe, and I think it</p> <p>18 was senior counsel-director, something like that.</p> <p>19 Q. Broadly speaking, what kind of legal work did</p> <p>20 you do at Teleglob over the years?</p> <p>21 A. I was hired to take over all of their</p> <p>22 litigation worldwide, and that would be management of</p> <p>23 their litigation.</p> <p>24 Q. You did this between I take it 1999 and April</p>	<p>1 A. Specifically, no. At TCC, the U.S. entity, no.</p> <p>2 I..</p> <p>3 Q. Go ahead.</p> <p>4 A. Although -- look, let me just take a quick</p> <p>5 second, which is TCC is part of the debtors' estate</p> <p>6 Q. Right.</p> <p>7 A. And I also was coordinating all of the</p> <p>8 bankruptcy proceedings. So arguably I represent all</p> <p>9 of the debtor estates, all of the debtor entities, but</p> <p>10 TCC did not have litigation, per se.</p> <p>11 Q. TCC was the parent corporation, I take it, of</p> <p>12 Teleglob USA, Inc.?</p> <p>13 MR. COCHRAN: I'm sorry I didn't hear</p> <p>14 the question.</p> <p>15 (The reporter read back the last</p> <p>16 question.)</p> <p>17 THE WITNESS: It is, I believe, the next</p> <p>18 company up the Teleglob chain.</p> <p>19 BY MR. SCHIMMEL:</p> <p>20 Q. Would it be fair to say that Teleglob USA,</p> <p>21 Inc. was the company that was responsible for the</p> <p>22 build-out and operation and maintenance of what is</p> <p>23 called GlobeSystem?</p> <p>24 MR. COCHRAN: I object to form</p>
Page 7	Page 9
<p>1 of 2002? Would that be correct?</p> <p>2 A. Yes</p> <p>3 Q. Did you do any kind of other legal work during</p> <p>4 that time period?</p> <p>5 A. During the time at Teleglob?</p> <p>6 Q. Yes. Right, from 1999 through April of 2002.</p> <p>7 A. For a matter of months I also handled all of</p> <p>8 the HR issues, employment law issues. For a matter of</p> <p>9 months I handled real estate issues, but principally I</p> <p>10 was there for litigation purposes</p> <p>11 Q. We've been talking about Teleglob generally.</p> <p>12 Was there a specific name of the entity that employed</p> <p>13 you?</p> <p>14 A. Yes</p> <p>15 Q. What was the name?</p> <p>16 A. Teleglob USA, Inc.</p> <p>17 Q. What was the business of Teleglob USA, Inc.?</p> <p>18 A. Teleglob USA, Inc. was a FCC-licensed</p> <p>19 telecommunications provider providing</p> <p>20 telecommunication services in the United States.</p> <p>21 Q. Did you have any titles or responsibilities at</p> <p>22 Teleglob Communications Corporation?</p> <p>23 A. At any time?</p> <p>24 Q. At any time</p>	<p>1 A. It is one of the companies that was involved in</p> <p>2 GlobeSystem to my understanding.</p> <p>3 Q. What other companies were involved in the</p> <p>4 build-out, operations and maintenance of GlobeSystem?</p> <p>5 A. There were many. I couldn't tell you which</p> <p>6 ones specifically</p> <p>7 Q. But the one you're aware of is Teleglob USA,</p> <p>8 Inc.?</p> <p>9 A. I know that Teleglob USA, Inc. was part of the</p> <p>10 entities that were building out the GlobeSystem</p> <p>11 MR. SCHIMMEL: Let me mark an exhibit</p> <p>12 (Cooke Deposition Exhibit No. 2 was marked</p> <p>13 for identification.)</p> <p>14 BY MR. SCHIMMEL:</p> <p>15 Q. Mr. Cooke, just before I show you the next</p> <p>16 exhibit, you said that you were responsible for</p> <p>17 managing all of the litigation worldwide of Teleglob?</p> <p>18 A. Yes</p> <p>19 Q. Did that involve litigation relating to the</p> <p>20 build-out, operation and maintenance of GlobeSystem?</p> <p>21 A. Yes. In one case, yes.</p> <p>22 Q. And can you identify any company other than</p> <p>23 let's call it TUSA, Teleglob USA, Inc., that was</p> <p>24 involved in those activities that I just described,</p>

3 (Pages 6 to 9)

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1 the maintenance, operations and build-out of  
2 **GlobeSystem?**  
3 MR. COCHRAN: I object I object to form.  
4 A. Just any other entity?  
5 **Q. That to your knowledge were involved in those**  
6 **three things.**  
7 A. I'm sorry The three things were?  
8 **Q. The build-out, the operations and maintenance.**  
9 MR. COCHRAN: I object to form.  
10 A. I think Telelobe Canada Limited Partnership  
11 was also involved in that  
12 **Q. Any other one?**  
13 A. There would be many, many more  
14 **Q. Can you identify any --**  
15 MR. COCHRAN: I object to form  
16 **Q. -- that to your knowledge were involved in**  
17 **those three activities?**  
18 A. The Netherlands affiliate of Telelobe would  
19 also be involved I don't know the exact name of it.  
20 **Q. Any other company?**  
21 A. I can't think of any others  
22 **Q. What was the role of Telelobe Canada Limited**  
23 **Partnership in connection with those three things?**  
24 MR. COCHRAN: Objection Scope

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1 A. I have no idea.  
2 **Q. What was to your knowledge the role of the**  
3 **Netherlands affiliate in connection with those three**  
4 **things?**  
5 MR. COCHRAN: Objection. Beyond the  
6 scope.  
7 A. I have no idea.  
8 **Q. Mr. Cooke, I've just shown you what has been**  
9 **marked as Cooke Exhibit 2. Do you recognize this**  
10 **document?**  
11 A. Yes, I do.  
12 **Q. What is it?**  
13 A. It's an affidavit from me.  
14 **Q. Did you prepare this affidavit?**  
15 A. No.  
16 **Q. Who prepared this affidavit?**  
17 A. My counsel.  
18 **Q. Would that be the law firm of Richards, Layton**  
19 **& Finger?**  
20 A. I believe so.  
21 **Q. Do you know who at that law firm prepared the**  
22 **affidavit?**  
23 A. I don't remember  
24 **Q. Was it sent to you for your review?**

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1 A. Yes, it was  
2 **Q. Did you, in fact, review it?**  
3 A. Yes, I did  
4 **Q. To make sure that it was accurate?**  
5 A. Yes  
6 **Q. And were you satisfied before you signed it**  
7 **that it was accurate?**  
8 A. Yes, I was  
9 **Q. And I take it it is your signature?**  
10 A. Yes, it is  
11 **Q. I would like to direct your attention to**  
12 **paragraph 7 of your affidavit which reads "Finally,**  
13 **Telelobe's electronic backup information prior to**  
14 **2001 has largely been written over according to**  
15 **company policies in place prior to April 2002 and is**  
16 **no longer available for recovery."**  
17 **Do you see this?**  
18 A. Yes, I do  
19 **Q. What are the company policies that you were**  
20 **describing in that paragraph?**  
21 A. Telelobe in the summer of 2002 I went up to go  
22 to Montreal, specifically to meet with our IT  
23 department and to direct them to stop -- or to  
24 preserve all electronic records And at that meeting

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1 they told me that for cost reasons they had been  
2 writing over tapes that they no longer thought that  
3 they needed and I told them to stop that.  
4 And I think at the time when I went up  
5 there they had written through up until sometime in  
6 January of 2001  
7 **Q. I'll get back to what you just said.**  
8 **But what are the policies that you were**  
9 **talking about in your affidavit?**  
10 A. Specifically, I don't know All I know was at  
11 the time the IT department was following whether you  
12 call it a policy or whether you call it a procedure of  
13 trying to save costs by writing over IT tapes  
14 **Q. Who is the person in the IT department that you**  
15 **met?**  
16 A. It was a fellow by the name -- I met with a  
17 number of people. But the fellow that I specifically  
18 remember was Roger Schodolowsky  
19 **Q. Can you spell that?**  
20 A. I have no idea how to spell his name Sorry  
21 **Q. Mr. Schodolowsky was to your knowledge an**  
22 **employee of what company?**  
23 A. I don't know He was obviously an employee of  
24 one of the Telelobe entities, Canadian entities

4 (Pages 10 to 13)

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1 Q. Did you meet with anyone else in the IT  
2 department in Montreal?  
3 A Yes  
4 Q. Who?  
5 A I met with another gentleman. I want to say  
6 his name was Alain, A-l-a-i-n. I have no idea what  
7 his last name was, but he was also involved in this  
8 electronic meeting that we had and then I met with  
9 Roger's direct report  
10 Q. Who was that person?  
11 A. It was a woman and I have no idea what her name  
12 is  
13 Q. Was she responsible of the IT department for,  
14 broadly speaking, Teleglobe?  
15 MR COCHRAN: I did not hear the question.  
16 MR SCHIMMEL: Let me rephrase the  
17 question.  
18 BY MR. SCHIMMEL:  
19 Q. What was her role, to your knowledge?  
20 A. I don't know if she was the head of IT or not,  
21 but she was a more senior officer in the IT  
22 department.  
23 Q. Was it the first time you met that woman?  
24 A. Yes.

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1 Q. When did you go to Montreal?  
2 A It was early summer  
3 Q. Apart from going to Montreal, did you send any  
4 written instruction to anybody at the IT department of  
5 Teleglobe on the subject you just discussed?  
6 MR COCHRAN: Objection.  
7 Q. Which is the preservation of electronic  
8 records.  
9 A. Not before that meeting.  
10 Q. How about after that meeting?  
11 A Yes. I believe I confirmed that with an  
12 e-mail, once again confirming our understanding not to  
13 override any more electronic records  
14 Q. Was that the extent of your understanding?  
15 MR COCHRAN: I object to form.  
16 A. I'm not sure I understand your question now.  
17 Q. Was your understanding that Teleglobe would  
18 stop overwriting electronic records?  
19 A Yes.  
20 Q. Did you instruct people in the IT department to  
21 do anything else?  
22 A. I told them to preserve all electronic tapes.  
23 Q. Those would be backup tapes?  
24 A Yes.

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1 Q. Did you instruct them to do anything else?  
2 A Not that I remember  
3 Q. To your knowledge, prior to the summer of 2002  
4 did Teleglobe have a document preservation policy?  
5 A I am not aware of one  
6 Q. So there was no document preservation policy  
7 for paper documents?  
8 A I don't know if there was or not  
9 Q. But as a litigator involved in managing a  
10 number of litigations for Teleglobe prior to April  
11 2002 did you ever consider the issue of whether  
12 Teleglobe had a document preservation policy?  
13 A I can't say if I considered it or not.  
14 Q. Did the issue of preserving documents come up  
15 in any litigation in which Teleglobe was involved?  
16 A. No.  
17 Q. You had one meeting with the IT department in  
18 Montreal on the subject you described, which was to  
19 stop overwriting electronic records and preserve  
20 tapes?  
21 A. I had one meeting that summer. yes.  
22 Q. Did you have other meetings subsequently?  
23 A I did have discussions from time to time with  
24 them

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1 Q. On what subjects?  
2 A. Making sure that they were continuing to comply  
3 with my directions.  
4 Q. When you say, "making sure that they were  
5 complying with my directions," do you mean stop  
6 overwriting backup tapes?  
7 A Yes. And preserving tapes  
8 Q. Did you mean anything else?  
9 A. No.  
10 Q. Do you recall roughly when you had those  
11 discussions with people in the IT department in  
12 Canada?  
13 A. No. They would call occasionally because those  
14 tapes are expensive and so what they would do is say,  
15 "Do I still have to continue to preserve?" And as you  
16 know or may not know, Cerberus ultimately bought  
17 Teleglobe as a going concern and so there was a period  
18 when there was an interim management agreement and I  
19 wanted to make sure that they were continuing to  
20 follow the same procedures.  
21 Q. What was the time period?  
22 A Cerberus took over control of Teleglobe in like  
23 October, November of 2002 and that deal subsequently I  
24 guess it closed in I want to say May of 2003, although

5 (Pages 14 to 17)

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1 once again I may be a month or two off either way  
2 **Q. So during the time period between the summer of**  
3 **2002 and May of 2003 you had some discussions?**  
4 A. Yes  
5 **Q. With the people in the IT department of**  
6 **Telelobe?**  
7 A. Yes  
8 **Q. To make sure that they had stopped overwriting**  
9 **backup tapes and preserved whatever backup tapes**  
10 **existed?**  
11 A. Yes  
12 **Q. Did you have any other discussions with the**  
13 **people in the IT department in Canada?**  
14 A. At any time? I mean, other than the standard  
15 network problems with my computer from time to time.  
16 no  
17 **Q. And your instruction to them was always the**  
18 **same, namely preserve whatever backup tapes you have**  
19 **and stop overwriting?**  
20 A. Yes  
21 **Q. Why did you ask people in the IT department in**  
22 **Montreal to stop overwriting backup tapes?**  
23 MR. COCHRAN: That question may call for  
24 attorney-client privileged information or work

Page 19

1 product. I caution the witness not to reveal such  
2 A. I'm not sure what -- I think it was *done for a*  
3 couple of reasons. One was we were going to have the  
4 core sale and we wanted to figure out what documents  
5 were available, both electronic and hard copy  
6 And, two, I was directed at some point by  
7 someone just to make sure that we kept our corporate  
8 records intact for whatever reason  
9 **Q. When you say that you were directed by someone**  
10 **to preserve records intact, was that by a lawyer that**  
11 **you were instructed to do that?**  
12 A. Honestly, I can't remember. I can't remember  
13 if it came from E & Y, who was the monitor in our  
14 case, or my bankruptcy counsel or from John Brunette  
15 I honestly cannot remember  
16 **Q. Were there discussions after April 24 of 2002**  
17 **between you and any person about the fact that the**  
18 **debtors may have claims against BCE?**  
19 MR. COCHRAN: I'm sorry. I didn't hear  
20 the end of the question  
21 (The reporter read back the last  
22 question.)  
23 MR. COCHRAN: Would you read it back  
24 again?

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1 (The reporter reread the last question.)  
2 MR. COCHRAN: I object to form.  
3 THE WITNESS: Yes  
4 BY MR. SCHIMMEL:  
5 **Q. When did you have those discussions for the**  
6 **first time?**  
7 MR. COCHRAN: That's beyond the scope of  
8 the Rule 30(b)(6)  
9 MR. SCHIMMEL: No. I disagree  
10 MR. COCHRAN: It is beyond the scope of  
11 the Rule 30(b)(6) notice. He's not tendered for that  
12 purpose  
13 MR. SCHIMMEL: You may answer.  
14 MR. COCHRAN: I'm going to direct him not  
15 to answer, unless you can tell me --  
16 MR. SCHIMMEL: You're instructing him not  
17 to answer on the ground that it's beyond the scope?  
18 MR. COCHRAN: That's correct.  
19 MR. SCHIMMEL: That is absolutely  
20 improper.  
21 MR. COCHRAN: Sorry.  
22 MR. SCHIMMEL: And I do not agree that it  
23 is beyond the scope of the deposition notice.  
24 MR. COCHRAN: Then tender an explanation.

Page 21

1 I'm happy to have the witness step out while you do  
2 so  
3 MR. SCHIMMEL: We want to know what  
4 efforts the debtors took to preserve documents after  
5 they became on notice that they may have claims  
6 against BCE. The question is within the scope of the  
7 notice of deposition and I would like Mr. Cooke to  
8 answer the question.  
9 MR. COCHRAN: That topic is not listed as  
10 one of those that you've noticed  
11 MR. SCHIMMEL: The efforts to preserve and  
12 collect documents is listed  
13 MR. COCHRAN: But the topic that you just  
14 expressed is not  
15 MR. SCHIMMEL: The topic is expressly  
16 covered  
17 Mr. Cooke --  
18 MR. COCHRAN: Would you like to show me in  
19 the notice?  
20 MR. SCHIMMEL: "Plaintiffs' efforts to  
21 preserve or maintain documents since April 24, 2002,  
22 including any hard copies of documents and electronic  
23 documents." That is subject No. 1.  
24 Subject No. 2. "Plaintiffs' efforts to

6 (Pages 18 to 21)



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1 collect, review and produce documents prior to, or in  
 2 connection with, the Committee's investigation of  
 3 possible claims or causes of action pursuant to Rule  
 4 2004 of the Federal Rules of Bankruptcy Procedure, and  
 5 in connection with this litigation," and it includes a  
 6 number of topics

7 MR. COCHRAN: I'm happy to tender him on  
 8 any of those issues. Maybe you would like to rephrase  
 9 your question

10 MR. SCHIMMEL: No. I would like to know  
 11 when for the first time you had notice, you had  
 12 discussions -- let me rephrase the question.

13 Can you repeat Mr. Cooke's prior answer  
 14 and my question?

15 (The reporter read back the last two  
 16 questions and answers.)

17 BY MR. SCHIMMEL:

18 **Q. What I am asking is when for the first time did**  
 19 **you have discussions on that topic?**

20 MR. COCHRAN: I'm going to direct him not  
 21 to answer that question. That's not within the scope

22 It also intrudes on the work product and  
 23 attorney-client privilege

24 MR. SCHIMMEL: No, it doesn't. And I

Page 24

1 before it was filed?

2 A. Yes, I did

3 **Q. Did you approve the statements in the complaint**  
 4 **before it was filed?**

5 MR. COCHRAN: I object to the form

6 A. I'm not sure I would say I approved it.

7 **Q. What do you mean by that?**

8 A. I reviewed it

9 **Q. Did you have any disagreement with anything**  
 10 **written in the complaint?**

11 A. I reviewed it, I made comments on it and the  
 12 complaint was filed.

13 **Q. And you were satisfied with the document when**  
 14 **it was filed?**

15 A. I would have to say honestly, since I'm running  
 16 this case this gets --

17 MR. COCHRAN: It's a yes or no

18 A. Well, I feel like it is invading -- as a  
 19 litigator running this case, I feel like you're asking  
 20 me a work product question. You're asking me did I  
 21 review the case and did I approve it and was I

22 satisfied with it? I think it's -- I don't think I  
 23 could answer you how did I feel about this complaint

24 MR. COCHRAN: On that basis, I direct him

Page 23

1 think the instruction is improper

2 MR. COCHRAN: That's fine.

3 MR. SCHIMMEL: I would like to mark the  
 4 complaint in this action.

5 (Cooke Deposition Exhibit No. 3 was marked  
 6 for identification.)

7 MR. SCHIMMEL: Mr. Cochran, so you  
 8 understand, our position is that your instruction is  
 9 improper and we will have to have Mr. Cooke again for  
 10 the continuation of this deposition

11 MR. COCHRAN: You might like to proceed to  
 12 your next question

13 BY MR. SCHIMMEL:

14 **Q. Mr. Cooke, I have just showed you the complaint**  
 15 **in this action and I would like you to take a look at**  
 16 **paragraph 125 and 127 of the complaint.**

17 **And before you do that, I will ask you the**  
 18 **following question: Have you seen this document**  
 19 **before?**

20 A. (Reviewing document). Yes, I have.

21 **Q. Did you see a draft of this complaint before it**  
 22 **was filed?**

23 A. Yes, I did

24 **Q. Did you provide comments on the complaint**

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1 not to answer the question.

2 It's also beyond the scope of the notice

3 **Q. Mr. Cooke, I'm directing your attention to**  
 4 **paragraph 125.**

5 A. Yes

6 **Q. Which is under count 1, breach of contract. I**  
 7 **will read you paragraph 125: "BCE made enforceable**  
 8 **agreements with the Debtors, or with TI with the**  
 9 **Debtors as third-party beneficiaries, to provide**  
 10 **sufficient funding to enable the Debtors to meet their**  
 11 **cash needs through 2003."**

12 **Do you see that?**

13 A. Yes, I do

14 **Q. Under paragraph 127 the complaint reads "BCE**  
 15 **breached the agreements in a material way."**

16 **Do you see that?**

17 A. Yes, I do

18 **Q. Mr. Cooke, when did you become aware that BCE**  
 19 **had breached the agreement that is described here?**

20 MR. COCHRAN: I am going to direct the  
 21 witness not to answer unless you can tender to me an  
 22 explanation for how that relates to the topics that  
 23 are noticed here

24 MR. SCHIMMEL: It is very simple. The

7 (Pages 22 to 25)

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1 notice of the existence of claims triggers certain  
2 obligations in terms of preserving and collecting  
3 documents and the question of when Mr. Cooke and the  
4 debtors became on notice of the existence of claims is  
5 perfectly covered by the notice. I have said that  
6 before. I will not repeat it.  
7 I would like the question read again to  
8 Mr. Cooke and I would like an answer.  
9 MR. COCHRAN: Just a moment.  
10 Having again reviewed the specific topics  
11 listed in your Rule 30(b)(6) notice, we're happy to  
12 have this witness testify about any of those topics.  
13 The question of when he became, Mr. Cooke became aware  
14 that your clients had breached their agreement as  
15 stated in the specific allegations of the complaint is  
16 not listed as any of the topics in your Rule 30(b)(6)  
17 notice.  
18 Moreover, since Mr. Cooke is a litigator  
19 or is associate general counsel charged with some  
20 responsibility for this litigation, I am concerned  
21 that you are attempting to invade work product.  
22 If you would like to rephrase your  
23 question to address the topics that you've noticed,  
24 I'm not going to have an objection.

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1 MR. SCHIMMEL: The question is fairly  
2 within the topics that are noticed and my question  
3 does not seek to elicit communications with the  
4 attorneys. It's a question about when. So let me  
5 rephrase the question.  
6 BY MR. SCHIMMEL:  
7 Q. When did the debtors become aware that BCE  
8 breached the agreements in a material way as described  
9 in paragraph 127 of the complaint?  
10 MR. COCHRAN: Now your question is when  
11 the debtors became aware?  
12 MR. SCHIMMEL: Yes.  
13 MR. COCHRAN: I think the only information  
14 this witness could have about that would have come  
15 from attorney-client communications. Nor is that  
16 within the scope of the topics that you've identified.  
17 MR. SCHIMMEL: Are you instructing the  
18 witness not to answer?  
19 MR. COCHRAN: Well, it is calling for  
20 privileged information.  
21 Why don't we consult on the matter of  
22 whether there's a privilege here to assert and then I  
23 will tell you?  
24 (The witness and Mr. Cochran left the

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1 deposition room for a brief period of time.)  
2 MR. SCHIMMEL: I would like the question  
3 read back to Mr. Cooke.  
4 (The reporter read back the pending  
5 question.)  
6 MR. COCHRAN: I will let him answer that  
7 question.  
8 THE WITNESS: I don't know when the  
9 debtors first became aware.  
10 BY MR. SCHIMMEL:  
11 Q. When did you become aware?  
12 MR. COCHRAN: When did he become aware of  
13 what?  
14 MR. SCHIMMEL: That BCE had breached the  
15 agreements in a material way as described in paragraph  
16 127 of the complaint.  
17 MR. COCHRAN: I will let him answer that  
18 question.  
19 A. I can't remember specifically.  
20 Q. In what year?  
21 A. It would have been in sometime May 2002 I want  
22 to say.  
23 Q. Is your answer complete?  
24 A. I believe so.

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1 Q. I would like you to look at paragraph 131 of  
2 the complaint under count 2, which reads "BCE made  
3 promises to fund the Debtors' cash needs through the  
4 completion of the GlobeSystem, upon which promises BCE  
5 reasonably expected the Debtors to act in a definite  
6 and substantial character."  
7 Do you see that?  
8 A. Yes, I do.  
9 Q. In paragraph 133 under count 2 the complaint  
10 reads "BCE broke its promises to the Debtors when it  
11 precipitously terminated its ongoing funding, leaving  
12 the Debtors with no alternative but to file for  
13 bankruptcy."  
14 Mr. Cooke, when did the debtors become  
15 aware that BCE had broken the promises set forth in  
16 paragraph 133 of the complaint?  
17 MR. COCHRAN: I object to form.  
18 A. I don't know specifically.  
19 Q. Generally?  
20 MR. COCHRAN: I object to form.  
21 A. No.  
22 Q. In what year?  
23 MR. COCHRAN: I object to form.  
24 A. Well, the year would be 2002.

8 (Pages 26 to 29)

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1 Q. Do you have any idea of what months in 2002?  
2 MR. COCHRAN: The same objection.  
3 A. No.  
4 Q. I would like you to look at paragraph 139 under  
5 count 3: "BCE represented that it would fund the  
6 Debtors' cash needs through the completion of the  
7 GlobeSystem."  
8 Do you see that?  
9 A. Yes, I do  
10 Q. Paragraph 140 of the complaint reads: "BCE  
11 made untrue statements of material fact and failed to  
12 state material facts in order to make its prior  
13 statements not misleading."  
14 Mr. Cooke, when did the debtors become  
15 aware that BCE had made misrepresentations about the  
16 funding of the debtors?  
17 MR. COCHRAN: I object to form.  
18 A. And my answer would be the same, which is I  
19 don't know.  
20 Q. Sometime in 2002?  
21 MR. COCHRAN: I object to form.  
22 A. Yes.  
23 Q. But you don't remember at all when?  
24 A. I have no information on that

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1 Q. Is your answer complete?  
2 A. Yes  
3 Q. Now, Mr. Cooke, after April 24 of 2002 did you  
4 instruct any employees or officers of Telelobe to  
5 preserve and maintain the documents that they had in  
6 their possession, custody or control?  
7 A. Are you talking about hard copy documents?  
8 Q. Any.  
9 A. Did I personally do that? No  
10 Q. Did anyone after April 24 of 2002 instruct any  
11 employees or officers of Telelobe, and by that I  
12 really mean all of the debtors, to preserve and  
13 maintain the documents in their possession, custody  
14 and control?  
15 MR. COCHRAN: I object to form  
16 A. And let me actually go back because we had  
17 continuing instruction. I don't know when. But I did  
18 tell everyone in the legal department we had to  
19 maintain all our documents. I can't remember when  
20 that was said, but that was said repeatedly throughout  
21 2002.  
22 But specific communications? It could  
23 have happened with numerous people. I don't  
24 specifically remember any individual communication

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1 Q. Did you personally instruct people in the legal  
2 department to preserve their documents?  
3 A. Yes, I did.  
4 Q. Did you do it in writing?  
5 A. I can't remember if I did or not. I know I did  
6 it orally  
7 Q. Do you remember when you did it orally?  
8 A. Probably sometime in May and then repeatedly  
9 thereafter.  
10 Q. Who did you instruct to preserve their  
11 documents in the legal department?  
12 A. Every lawyer, every admin.  
13 Q. So who would be those lawyers?  
14 A. There are I think a number of them. Do you  
15 want me to list all of the ones I can remember?  
16 Q. Yes. All the ones in the legal department of  
17 Telelobe and also all the ones that you instructed to  
18 keep their documents.  
19 A. All the ones that I can remember? It would  
20 have been Chuck Tievsky  
21 Q. How do you spell that?  
22 A. T-i-e-v-s-k-y. You would have Brian Cute,  
23 C-u-t-e. Kieren Bustamante, B-u-s-t-a-m-a-n-t-e  
24 Kathy Morgan. Helen Fields

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1 Q. Is that Helen Fields?  
2 A. Helen Fields. Matt Nyman, N-y-m-a-n. Dan  
3 Snyder, S-n-y-d-e-r. Lane Blackmer, B-l-a-c-k-m-e-r  
4 Probably others. It was the entire legal group at  
5 that time.  
6 Q. And those are the individuals that you  
7 instructed orally to preserve their documents?  
8 A. No. I believe I instructed them to preserve  
9 Telelobe documents. So, in other words -- I'll let  
10 you ask the question.  
11 Q. I would like to know exactly what instruction  
12 you gave to people in the legal department of  
13 Telelobe.  
14 A. Well, we were going through the bankruptcy  
15 process. We were having team meetings and the legal  
16 department was the face of Telelobe in communications  
17 with the company. We were explaining the bankruptcy,  
18 what was going to happen.  
19 And so what I told them in their  
20 communications with others was that we had to maintain  
21 our documents and control them, right, don't delete  
22 tapes, don't throw materials out. So it was that  
23 general, this is a time of turmoil; a lot of people  
24 were leaving. And so the presumption was that as they

9 (Pages 30 to 33)



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1 went out and dealt with people, I mean we were  
2 involved in drafting all the bankruptcy papers and all  
3 the rest, was to make sure that documents were  
4 preserved.  
5 **Q. Did you personally issue any memo or written**  
6 **document to the people in the legal department**  
7 **instructing them to do that?**  
8 **A.** I had a colleague, Chris Cihon, C-i-h-o-n, and  
9 I had him draft an e-mail. And I can't remember if he  
10 sent it out. I can't remember if I sent it out. I  
11 can't remember if it was even sent out specifically,  
12 but I know that we talked about sending out an e-mail  
13 beyond the legal department to make sure that  
14 documents and records were maintained.  
15 **Q. Is there any way to find out whether that**  
16 **e-mail was, in fact, sent?**  
17 **A.** You could look on the backup tapes.  
18 **Q. Any other way to find out if the e-mail was**  
19 **sent?**  
20 **A.** Not that I'm aware of.  
21 **Q. Is Mr. -- I'm going to misstate his name. But**  
22 **Cihon?**  
23 **A.** Cihon.  
24 **Q. Is he still an employee of Teleglobe?**

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1 **A.** No, he's not.  
2 **Q. When did he leave?**  
3 **A.** He left it was November. I can't remember if  
4 it was November '02 or November '03. It was one of  
5 the two.  
6 **Q. Do you have the hard drive of the computer of**  
7 **Mr. Cihon?**  
8 **A.** No, I don't.  
9 **Q. What happened to it?**  
10 **A.** I don't know specifically.  
11 **Q. When I said do you have the hard drive, I meant**  
12 **do the debtors have the hard drive of Mr. Cihon?**  
13 **A.** I don't know if the debtors do.  
14 **Q. Who would have that information?**  
15 **A.** It would probably be we have one remaining IT  
16 person, David Wolfe.  
17 **Q. Would Mr. Wolfe be the best person to ask if**  
18 **the debtors still have the personal computer and the**  
19 **hard drive of Mr. Cihon?**  
20 **A.** He is the only person in charge of IT affairs.  
21 I don't know if he's the best person or not.  
22 **Q. But there is no one else?**  
23 **A.** No one else in the IT group.  
24 **Q. No one else we could ask?**

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1 **A.** No. I mean, there are still ten employees at  
2 the estate. I mean they're people that have left.  
3 **Q. No. Let me rephrase the question.**  
4 **Is there any person other than Mr. Wolfe**  
5 **that we could ask about the computer of Mr. Cihon?**  
6 **A.** Yes.  
7 **Q. Who?**  
8 **A.** Well, you could ask Mr. Cihon. I mean, you  
9 could ask the people that were in the IT department at  
10 the time he left. I'm sorry.  
11 **Q. The question is --**  
12 **A.** I'm not trying to play games.  
13 **Q. -- do the debtors have the computer and the**  
14 **hard drive of Mr. Cihon?**  
15 **A.** I'm sorry? That's the question?  
16 **Q. That is the question. How do we go about**  
17 **finding out the answer to that question?**  
18 **A.** So you would have to ask either Mr. Cihon or  
19 somebody at the estate.  
20 **Q. Mr. Cihon left. So how could he know what**  
21 **happened to his computer?**  
22 **MR. COCHRAN:** I object to form.  
23 **A.** Well, he might have taken it with him.  
24 **Q. Do you know where Mr. Cihon went to work after**

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1 **he left Teleglobe?**  
2 **A.** I believe he went to Dallas, Texas.  
3 **Q. Do you know where he works?**  
4 **A.** No, I don't.  
5 **Q. Was it a standard procedure for people at the**  
6 **debtors to take their computer equipment with them**  
7 **after they left the employ of the debtors?**  
8 **A.** Teleglobe had a program that was approved by  
9 the Bankruptcy Court so that as people left their  
10 employment at Teleglobe they had to the right to  
11 purchase their computer equipment from the estate.  
12 **Q. Would there be a log indicating whether**  
13 **Mr. Cihon purchased his computer from the estate?**  
14 **A.** I don't know.  
15 **Q. Was any effort made to make a copy of the**  
16 **computer of Mr. Cihon before he left?**  
17 **A.** Yes.  
18 **Q. What effort was made?**  
19 **A.** Well, this was. I believe the effort was that  
20 when a person left Teleglobe they were kept on the  
21 system for a period of 30 days and pursuant to the  
22 disclosures that we made under the default e-discovery  
23 standard that would have allowed backup tapes to be  
24 made of that person's computer files.

10 (Pages 34 to 37)

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1 Q. So to the extent a copy of the computer exists,  
 2 it is on the backup tapes?  
 3 A Yes  
 4 Q. Do the backup tapes copy the hard drive of a  
 5 person?  
 6 A I'm not sure what you mean by "hard drive."  
 7 Q. Do they back up information contained on the  
 8 server?  
 9 A Yes  
 10 Q. Do they backup information contained on the  
 11 hard drive of a person that would not be on the  
 12 server?  
 13 A Well, I can explain it this way, which is I  
 14 have a mail system and then I had their corporate  
 15 drives There's an H drive where we kept all of our  
 16 corporate documents There's an I drive that I kept  
 17 my individual files All of those would have been on  
 18 the server and they would have been backed up through  
 19 the electronic tapes  
 20 Q. Do you know if this is standard for all of the  
 21 employees and officers of the debtors?  
 22 A I'm sorry? If what is standard?  
 23 Q. The process you just described, that people  
 24 would have an H drive for corporate documents and an I

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1 A No  
 2 Q. Is your answer complete?  
 3 A Yes  
 4 Q. Would he have sent it out without your  
 5 instruction to do so?  
 6 A Possibly  
 7 Q. Do you know?  
 8 A I don't know.  
 9 Q. Other than the possible e-mail from Mr. Cihon,  
 10 did anyone else on behalf of the debtors instruct any  
 11 person to preserve their documents after April 24,  
 12 2002?  
 13 MR. COCHRAN: I object to the form  
 14 A Specifically, I don't know  
 15 Generally, I can tell you that all the  
 16 lawyers were effectively deputies telling other people  
 17 do not discard documents  
 18 Q. Did any of the lawyers that you mentioned in  
 19 your last answer to your knowledge send a written memo  
 20 to anyone instructing them to preserve their  
 21 documents?  
 22 A And I don't know how they carried out that  
 23 mandate  
 24 Q. Did you ask them?

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1 drive for individual files.  
 2 A Yes. Everybody had access to -- well, the H  
 3 drive for legal. In other words, there are different  
 4 groups inside that and some had access into the  
 5 corporate documents and some had restricted access,  
 6 but there were servers to back up all of those various  
 7 drives and then everyone had an I drive.  
 8 Q. Do you know if people had the ability to store  
 9 documents or data on their hard drive that was not on  
 10 the server?  
 11 A Specifically, no. I know that if they did,  
 12 just thinking -- I don't know specifically.  
 13 Q. Who would have the answer to that question?  
 14 A David Wolfe.  
 15 Q. Let me go back to something you said before.  
 16 You said that Mr. Cihon may have drafted an e-mail  
 17 instructing people to preserve their documents.  
 18 Did you review his e-mail?  
 19 A I remember reviewing it  
 20 Q. What did it say specifically?  
 21 A Specifically, I can't remember.  
 22 Q. Did he send it to you by e-mail?  
 23 A I can't remember  
 24 Q. Do you remember instructing him to send it out?

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1 A No.  
 2 Q. Why not?  
 3 A We were in the middle of a bankruptcy filing.  
 4 I mean, I wasn't double-checking their performance  
 5 Q. Is your answer complete?  
 6 A Yes, it is.  
 7 Q. Is it a fact, Mr. Cooke, that a lot of people  
 8 either resigned from the debtors or were terminated  
 9 after April 24, 2002?  
 10 A I would say that's true.  
 11 Q. How many employees, roughly speaking, were  
 12 there at the debtors on or about April 24, 2002?  
 13 A I don't know specifically  
 14 Q. Generally speaking?  
 15 MR. COCHRAN: I object to form  
 16 A I would say 2,000  
 17 Q. How many employees or officers are there at the  
 18 debtors today?  
 19 A Ten.  
 20 Q. Before those individuals left the debtors did  
 21 the debtors make any effort to meet with them to  
 22 understand what documents they had, how they were  
 23 stored, who else may have documents?  
 24 MR. COCHRAN: I object to form

11 (Pages 38 to 41)

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1 A And now you're talking about hard copy  
2 documents?  
3 Q. Any documents.  
4 MR. COCHRAN: I object to form  
5 A Well, there was a, on May 15th there was a  
6 substantial RIF when people were told to leave the  
7 building, like the call was at 9:00 o'clock and you  
8 had to leave by 10:00. This was a worldwide call.  
9 People left and they were told that they could leave  
10 with their computers and their personal effects  
11 And what happened was those people were  
12 all kept up, as we talked about before, for 30 days  
13 for the backup electronic data to be filed according  
14 to the disclosures that we made in our default  
15 standards. And what happened with the paper documents  
16 specifically in Reston where all of those documents  
17 remained, what happened was that the facilities people  
18 went through sometime in late June or July -- at some  
19 point we moved, we were forced to move out of our  
20 11480 corporate offices and the surrounding buildings  
21 and we moved into this very small, one floor office  
22 building directly across the parking lot. But when  
23 that happened the facilities people were charged with  
24 boxing up all of the files and documents that remained

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1 and they were sent to a building that we owned in  
2 Chantilly, Virginia  
3 Those documents remained there until the  
4 fall of 2002, when a team of lawyers and maybe some HR  
5 people -- I don't know who specifically was deputized  
6 to go out there. But a group of lawyers definitely  
7 went out there and pulled out all of the documents  
8 that were going to be needed for the core sale to  
9 Cerberus. So all of the service agreements, all of  
10 the operational documents that would have gone with  
11 the assets that were being sold, all of that material  
12 was pulled out of the files. And I believe that  
13 anything that didn't relate to the business of  
14 Telelobe was also, you know, if there were additional  
15 personal effects or other things, those were also  
16 removed  
17 And then the remainder of those boxes were  
18 sent back and stored on our single floor in the office  
19 building at 11495 Commerce Park Drive with the  
20 addition of all the boxes and materials that we  
21 otherwise maintained in off-site storage in the United  
22 States. And those boxes have remained there since,  
23 once again, I don't know if that -- I think it was  
24 contemporaneous with the Cerberus interim management

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1 agreement, October, November, but that process might  
2 have gone through into the spring of 2003. I can't  
3 remember specifically.  
4 So those documents have been maintained  
5 and they exist today.  
6 Q. First of all, how many, generally speaking, how  
7 many people were told to leave TCC and its affiliates  
8 on May 15th?  
9 A. I want to say it was like half the company, so  
10 it was approximately a thousand people. It could have  
11 been 60 percent. It could have been 40 percent.  
12 Q. And before those people left was any effort  
13 made to copy the information on their computer other  
14 than the process of maintaining backup tapes that you  
15 explained?  
16 A. No. We would have operated under the default  
17 standards that we set forth in our disclosure  
18 statements at all times.  
19 Q. Meaning that to the extent there was a copy of  
20 what was on their computer, that copy would have been  
21 on the backup tapes?  
22 A. I'm not sure I understand your question now.  
23 Q. Let me ask more specific questions.  
24 Before those people left with their

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1 computers, I take it the debtors didn't make an effort  
2 to copy the computer?  
3 MR. COCHRAN: I object to form.  
4 A. No, that's not correct. In other words, at all  
5 times Telelobe had this backup system that was  
6 working daily, weekly, monthly. It would have carried  
7 through before they left. It would have carried  
8 through 30 days after they left so that you would have  
9 had, on the electronic records you would have had a  
10 full copy of what was on their computer on the H  
11 drive, the I drive, the mail Outlook program.  
12 Q. Was any effort made before those people left on  
13 May 15 to confirm that whatever information they had  
14 on their personal computer was, in fact, on the  
15 server?  
16 MR. COCHRAN: I object to form.  
17 A. I'm not sure I understand, once again.  
18 MR. SCHIMMEL: Can you repeat the  
19 question?  
20 (The reporter read back the last  
21 question.)  
22 THE WITNESS: The only way I can answer  
23 that question is by repeating that everybody had a  
24 mail Outlook mail box and they had access to and could

12 (Pages 42 to 45)

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1 interface with that H drives, the I drives. There may  
2 be other drives. Those are the only two that I  
3 specifically remember and that those were all being  
4 backed up on the servers.  
5 So I don't think any special effort was  
6 maintained because as a matter of course everyone's  
7 system's documents would have been copied  
8 BY MR. SCHIMMEL:  
9 Q. You have told me before that you don't know for  
10 a fact whether people had on their hard drive  
11 information that was not on the server.  
12 MR. COCHRAN: I object to form  
13 A. That is correct.  
14 Q. So my question is whether any effort was made  
15 before those people left on May 15th with their  
16 computers to confirm whether any data and documents on  
17 their hard drive was also on the server?  
18 A. I don't know.  
19 Q. Is your answer complete?  
20 A. Yes.  
21 Q. Would Mr. Wolfe know?  
22 A. I don't know if he would know or not.  
23 Q. I take it that after May 15 roughly half the  
24 company remained, right?

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1 A. That's my -- I don't know.  
2 MR. COCHRAN: I object to form.  
3 A. Honestly, I don't know how many people were  
4 left. A smaller number. Definitely a smaller number.  
5 Q. It's not meant to be a trick question.  
6 You told me that on May 15th either 40  
7 percent, 60 percent, somewhere in the middle were  
8 terminated?  
9 A. Right.  
10 Q. I take it that the remainder of the company  
11 stayed for some period of time after May 15th?  
12 A. Yes, they did.  
13 Q. Was any effort made to meet with these people  
14 after May 15th, those who remained, to ascertain what  
15 documents they had, how they were stored and who else  
16 may have documents?  
17 MR. COCHRAN: I object to form.  
18 A. Well, I guess all of the hard copy documents  
19 were handled in the way that I've described. As you  
20 know, there's an off-site storage space in Montreal  
21 and of that however many people that were left, the  
22 majority of those people went with the core business  
23 sale to Cerberus.  
24 So in that instance all those documents

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1 are still being cataloged and stored and kept either  
2 at Cerberus's offices or at the Laval facility or in  
3 Reston.  
4 In terms of the electronics, once again,  
5 the backup tapes were working and we have those tapes.  
6 Q. That doesn't really answer my question, which  
7 is: What efforts, if any, did the debtors make after  
8 May 15th to meet with these people to understand how  
9 they stored their electronic documents, what  
10 electronic documents they had, what other documents  
11 they had and who else may have documents?  
12 MR. COCHRAN: I object to form.  
13 A. I don't know specifically.  
14 Q. Did you instruct anybody to do that, meet with  
15 people to obtain that information?  
16 A. Other than what I have already testified in  
17 terms of telling people to maintain their records,  
18 traveling up to Montreal to tell them not to destroy  
19 or overwrite any tapes, constant discussions with our  
20 legal staff to make sure that everything was done and  
21 then overseeing all these documents as they moved  
22 around and then came back to our facility, no.  
23 Q. So you don't know if anyone met with the  
24 employees of the debtors to figure out what documents

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1 they had or how they were stored and who else may have  
2 documents?  
3 MR. COCHRAN: I object to form.  
4 A. Other than what I have already testified, no.  
5 Q. Did you ever make any effort to find out?  
6 A. Find out what? I'm sorry.  
7 MR. COCHRAN: I object to form.  
8 Q. If that information was available.  
9 MR. COCHRAN: I object to form.  
10 A. I'm sorry? What information?  
11 Q. The information is meeting with employees to  
12 figure out what documents they have, how they're  
13 stored and who else may have information.  
14 MR. COCHRAN: I object to form.  
15 A. Okay.  
16 Q. Did you ever ask your subordinates to report to  
17 you as to whether that information was available?  
18 MR. COCHRAN: Same objections.  
19 A. Other than what I've already told you -- I  
20 mean, I'm not trying to be difficult. I'm just trying  
21 to say comprehensively I think we had all the  
22 documentation between the hard copy documents and not  
23 destroying the electronic tapes. Right?  
24 Q. That's the extent of the efforts you made to

13 (Pages 46 to 49)

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1 preserve documents?  
2 MR COCHRAN: I object to form  
3 A As far as I -- that's efforts I made or the  
4 debtors made?  
5 Q. The debtors made.  
6 A I have no idea what other efforts the debtors  
7 made  
8 Q. Were you in charge of supervising the efforts  
9 of the debtors to preserve and collect documents?  
10 MR COCHRAN: I object to form  
11 A In part, yes.  
12 Q. Was anybody else in charge of supervising those  
13 efforts?  
14 A I would say that, once again, the entire legal  
15 team was instructed to maintain control, supervise  
16 these documents, so collectively -- specifically I  
17 can't tell you what directions or steps they took, but  
18 we all were under this understanding that we were not  
19 to destroy or lose control of the documents.  
20 Q. To the best of your recollection, is there any  
21 written material, memo, document that would reflect  
22 the efforts that your subordinates in the legal  
23 department engaged in to preserve and collect  
24 documents?

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1 A I don't know  
2 Q. And is your answer complete?  
3 A Yes.  
4 Q. Mr. Cooke, is it correct that the debtors sold  
5 a number of the servers that existed prior to April  
6 24, 2002?  
7 MR. COCHRAN: I'm sorry. I lost the last  
8 part of the question  
9 MR. SCHIMMEL: Let me ask it differently  
10 BY MR. SCHIMMEL:  
11 Q. Mr. Cooke, if you would turn your attention to  
12 paragraph 5 of your affidavit.  
13 A Yes.  
14 Q. You wrote "Since the time of the Debtors'  
15 bankruptcy filing in May 2002, Teleglobe has sold  
16 practically all of its IT equipment, including  
17 servers, tape restore machines, and other computer  
18 equipment formerly used to back up and store e-mail  
19 and other electronic data."  
20 Do you see that?  
21 A Yes, I do.  
22 Q. Is it accurate?  
23 A Yes, I believe it's accurate  
24 Q. When were the servers sold?

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1 A Well, some of the servers were sold as part of  
2 what I call the core sale, but the sale to Cerberus.  
3 Q Which would have closed on or about May of  
4 2003?  
5 A Yes, sometime in that time frame.  
6 Q. Right.  
7 A Some of the servers as we got smaller what  
8 would happen is, like I say, we would back up these  
9 individual's electronic files for the 30-day period  
10 and then once they were all effectively backed up  
11 according to the standards laid out in the disclosures  
12 under the default standards, they would be taken off.  
13 I don't know how you do that, but they would be taken  
14 off our system and then all of the information for the  
15 employees that remained would be migrated, like you  
16 might be able to take three servers because of the  
17 smaller number of data that we had to keep, it would  
18 be migrated onto one and we would sell the other two.  
19 And in terms of when those sales occurred,  
20 all of them were done in the United States pursuant to  
21 miscellaneous asset sales that would be documented in  
22 the Bankruptcy Court. Specifically, I don't know when  
23 they were. I just know that over time there was a  
24 migration of data and excess capacity was either sold

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1 to Cerberus or sold out to third parties  
2 Q. Do you need to take a break or can we continue?  
3 It's up to you  
4 A (The witness disagreed)  
5 Q. Good.  
6 MR. COCHRAN: Why don't we take a rest  
7 room break?  
8 MR. SCHIMMEL: I take it the same caution  
9 you gave me. Mr. Cooke can't apply to you, right?  
10 (A brief recess was taken.)  
11 MR. SCHIMMEL: Can you mark this?  
12 (Cooke Deposition Exhibit No. 4 was marked  
13 for identification.)  
14 BY MR. SCHIMMEL:  
15 Q. Mr. Cooke, I have just shown you what has been  
16 marked as Cooke Exhibit 4. Do you recognize this  
17 document?  
18 A Yes, I do.  
19 Q. What is it?  
20 A It's our default discovery disclosures  
21 Q. Did you review this document before it was  
22 served on the defendants?  
23 A I read through it.  
24 Q. Do you remember if you gave comments?

14 (Pages 50 to 53)



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1 A. I don't remember. I may have	1 (The reporter read back the last
2 Q. Did you read through it for accuracy?	2 question )
3 A. Yes, I did	3 THE WITNESS: I don't know what they did
4 Q. And were you satisfied that it was, in fact,	4 specifically
5 accurate?	5 BY MR. SCHIMMEL:
6 A. Yes	6 Q. Is your answer complete?
7 Q. You see the date on the last page is January	7 A. Yes
8 20, 2005?	8 Q. Who would have that information?
9 A. Yes, I do	9 A. It would probably be -- I don't know who
10 Q. Do you remember when you gave comments or when	10 specifically would have that information.
11 you reviewed it as compared to that date?	11 Q. Well, who is the person we would have to talk
12 A. No, I don't	12 to to understand whether the debtors consulted with
13 Q. Would it be shortly before that date or a long	13 any person before the servers were sold to ensure that
14 time before that date?	14 the backup tapes were, in fact, full and complete?
15 A. I don't remember	15 MR. COCHRAN: I object to the form.
16 Q. No idea?	16 A. The IT people that were handling the
17 A. Well, within a month	17 consolidation, and specifically I don't know who they
18 Q. I would like you to turn your attention to	18 are I don't know when it was done, who was there at
19 point number 5.	19 the time
20 A. Yes.	20 Q. Is your answer complete?
21 Q. Which reads "Debtors reasonably anticipate	21 A. Yes
22 problems to arise in connection with restoring e-mail	22 Q. As of today do you know if you have a full and
23 and/or other electronic documents from the backup	23 complete collection of backup tapes?
24 tapes listed above for the following reasons:" And	24 A. No, I don't know
Page 55	Page 57
1 then under e the disclosures read "There is not a	1 Q. And I take it your answer is complete?
2 central, complete catalog or index tying the backup	2 A. Yes
3 tapes that are available to specific users and	3 Q. Now I would like to read to you what is
4 servers. The Debtors thus are unable to verify	4 under -- let me ask the last question on e. Did the
5 whether the collection of backup tapes to which they	5 debtors make any effort to find out whether the
6 have access is a full and complete collection of	6 collection of backup tapes was full and complete
7 tapes."	7 before the servers were sold?
8 Do you see that?	8 MR. COCHRAN: I object to form.
9 A. Yes, I do	9 THE WITNESS: I'm sorry Can you read that
10 Q. Now, Mr. Cooke, before the servers of the	10 again?
11 debtors were sold, as you just described before our	11 (The reporter read back the last
12 break, did the debtors restore all of the backup tapes	12 question )
13 to make sure that the collection of backup tapes was	13 THE WITNESS: I don't know
14 fully complete?	14 BY MR. SCHIMMEL:
15 A. Not that I'm aware.	15 Q. I would like to read to you 5c, which says,
16 Q. Why not?	16 "The catalog" -- I'm sorry. 5b: "The backup tapes
17 A. I don't know.	17 are old and have been mounted several times. This has
18 Q. Is your answer complete?	18 caused excessive wear on the tapes resulting in some
19 A. Yes.	19 unrestoreable data using existing hardware and software
20 Q. Did the debtors have consultations with any	20 systems."
21 person to make sure that the collection of backup	21 Do you see that?
22 tapes was full and complete before the servers were	22 A. Yes, I do
23 sold?	23 Q. Before the servers were sold did the debtors
24 A. I'm sorry Would you repeat that?	24 restore backup tapes to ensure that the data was, in

15 (Pages 54 to 57)

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1 **fact, restorable?**  
2 THE WITNESS: I'm sorry. Would you read  
3 that back?  
4 (The reporter read back the last  
5 question.)  
6 THE WITNESS: We did restore backup tapes,  
7 Tele globe, all the time as a part of our operations.  
8 So backup tapes were used every day up until the time  
9 when we filed and they're still being done today.  
10 BY MR. SCHIMMEL:  
11 **Q. Why did the debtors restore backup tapes in the**  
12 **ordinary course of business before April 24, 2002?**  
13 MR. COCHRAN: I'm sorry. What was the  
14 date?  
15 MR. SCHIMMEL: April 24, 2002.  
16 MR. COCHRAN: Why did they restore before  
17 April 24, 2002 is the question?  
18 MR. SCHIMMEL: Yes.  
19 A. Specifically, my knowledge is I would  
20 occasionally use it for litigation purposes. I know  
21 there were also operational needs. Somebody had  
22 departed and they wanted to see e-mail exchanges or  
23 status of projects. Sometimes managers would want to  
24 look at their subordinates' files after they had left,

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1 that type of thing. It's fairly common.  
2 **Q. So it was fairly common to restore backup**  
3 **tapes?**  
4 A. Yes.  
5 **Q. After April 24, 2002 and before the servers**  
6 **were sold, what specifically was done to confirm that**  
7 **the data on the tapes was restorable?**  
8 A. Specifically, I don't know what was done.  
9 **Q. Do you know if anything was done?**  
10 A. No.  
11 **Q. Is your answer complete?**  
12 A. Yes.  
13 **Q. Who should we ask to have the answer to that**  
14 **question?**  
15 A. It would be the IT group that was using those  
16 backups at various times from that time to date.  
17 **Q. Are they all gone except for one person?**  
18 A. They are all gone except for one person.  
19 **Q. Now, before the servers were sold, did you**  
20 **personally consult with any person to ensure that the**  
21 **data on the backup tapes was restorable?**  
22 A. In conjunction with the sale of the servers.  
23 no.  
24 But in that meeting in Montreal, right, we

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1 wanted to make sure that there were backup tapes  
2 available and then were going to be maintained.  
3 **Q. Is your answer complete?**  
4 A. Yes.  
5 **Q. Before the servers were sold did you or anybody**  
6 **acting on behalf of the debtors make sure that you had**  
7 **catalogs for the backup tapes?**  
8 A. I don't know.  
9 **Q. Did you?**  
10 A. I specifically know you had a catalog for the  
11 tapes that were located in Reston, which is addressed  
12 in this default disclosure standard.  
13 **Q. I know that. Did you know whether at the time**  
14 **the servers were sold did you know that there was a**  
15 **catalog for the tapes located in Canada?**  
16 A. Yes.  
17 **Q. At the time the servers were sold there was a**  
18 **catalog for the tapes located in Canada?**  
19 A. I believe there still is a catalog for some of  
20 the tapes in Canada.  
21 **Q. Before the servers were sold did you**  
22 **specifically ask anyone whether there was a catalog**  
23 **for all the tapes located in Canada?**  
24 A. For all of the tapes, no.

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1 **Q. Why not?**  
2 A. I just was focused on the e-mail tapes  
3 specifically.  
4 **Q. Is your answer complete?**  
5 A. Yes.  
6 **Q. The e-mail tapes are in Reston?**  
7 A. There are e-mail tapes in Reston and there are  
8 e-mail tapes in Montreal.  
9 MR. SCHIMMEL: I would like to mark the  
10 following two exhibits.  
11 (Cooke Deposition Exhibit Nos. 5 and 6,  
12 respectively, were marked for identification.)  
13 BY MR. SCHIMMEL:  
14 **Q. Mr. Cooke, I have just shown you two exhibits,**  
15 **Exhibit 5 and Exhibit 6.**  
16 **Exhibit 5 was sent to us by your counsel**  
17 **and it is entitled "Selected directors, officers and**  
18 **employees of the Debtors, or TI, who may have**  
19 **generated discoverable e data."**  
20 **Have you seen this document before?**  
21 A. Yes, I have.  
22 **Q. When have you seen it?**  
23 A. Probably right before it was provided to you.  
24 **Q. Did you make comments on it?**

16 (Pages 58 to 61)

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1 A. Yes, I did.  
2 **Q. What comments did you make?**  
3 A. I don't remember specifically.  
4 **Q. Generally speaking?**  
5 A. Well, generally, we were looking for people  
6 that would have discoverable e-data.  
7 **Q. And did you provide this list to your counsel?**  
8 A. This list was generated by people at Telelobe  
9 and given to our counsel.  
10 **Q. Who generated the list at Telelobe?**  
11 A. It would have been John Brunette, Andre  
12 Mongrain.  
13 I can't remember anyone else specifically.  
14 **Q. What were they asked to do?**  
15 MR. COCHRAN: I'm sorry? Could you  
16 restate that?  
17 **Q. In connection with the preparation of the list,**  
18 **what were they asked to do?**  
19 MR. COCHRAN: That question may call for  
20 privileged communication and I don't know whether it  
21 does or it doesn't. But to the extent that your  
22 answer would reveal conversations with the debtors'  
23 counsel, you're cautioned not to reveal privileged  
24 information.

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1 **Q. Let me rephrase maybe the question in order to**  
2 **simplify it.**  
3 **What were the criteria that Mr. Brunette**  
4 **and Mr. Mongrain applied in preparing this list?**  
5 A. Well, I think we were doing exactly what we  
6 said, which was we were trying to identify people at  
7 Telelobe who might have discoverable e-data. It was  
8 really that simple.  
9 **Q. You told me before that before April 24, 2002**  
10 **there were maybe 2,000 employees at TCC and its**  
11 **affiliates.**  
12 **Do you remember that?**  
13 A. Not of TCC. There would have been 2,000  
14 worldwide Telelobe employees.  
15 **Q. Fair enough.**  
16 **What criteria were used to determine that**  
17 **those 28 people may have discoverable e-data?**  
18 MR. COCHRAN: I object to form.  
19 A. I have no idea what John or Andre; I don't know  
20 how they sifted through it. I don't know. I know  
21 that I would look at these people and say they are  
22 principal officers and directors.  
23 **Q. What do you mean by "principal officers and**  
24 **directors"?**

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1 A. Well, these are largely VP's and above at  
2 Telelobe, just looking at this list.  
3 **Q. And so based on their seniority you determined**  
4 **that if people were going to have e-data, those people**  
5 **would be likely the 28 individuals on the list?**  
6 A. I think that's probably one criteria. yes.  
7 **Q. Do you know of any other criteria other than**  
8 **seniority?**  
9 A. Not that I remember.  
10 **Q. Do you know of any person who may have e-data**  
11 **that's not listed on this list?**  
12 A. Specifically? No.  
13 MR. COCHRAN: I object to form.  
14 **Q. Let me ask a more precise question maybe.**  
15 **Do you know of any person who may have**  
16 **discoverable e-data in this case that is not on this**  
17 **list?**  
18 MR. COCHRAN: I object to form.  
19 A. Specifically, no.  
20 **Q. Exhibit 6 is a letter from your counsel to me**  
21 **dated January 31, 2005. Did you see this letter**  
22 **before it was sent?**  
23 A. I believe I did.  
24 **Q. Did you make comments on the letter?**

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1 A. I can't remember if I did or not.  
2 **Q. But you looked at it for accuracy?**  
3 A. Yes.  
4 **Q. Under paragraph 11 Mr. Cochran states "With**  
5 **regard to the individuals listed as potential**  
6 **custodians of e-data in the possession, custody or**  
7 **control of the Debtors, I have advised that server or**  
8 **hard drive data (or selected portions of hard drives,**  
9 **which have been imaged) is available for the following**  
10 **individuals: Brunette, Bustamante, Eakin, Milla,**  
11 **Mongrain, Morgan"...**  
12 MR. COCHRAN: Sciaciatano.  
13 A. "Sciaciatano, Snyder."  
14 Do you see that?  
15 A. Yes.  
16 **Q. Do the debtors have in their possession,**  
17 **custody or control the hard drive of Mr. Brunette?**  
18 A. Yes, they do.  
19 **Q. And does that hard drive contain the data**  
20 **generated between February 2000 and April 2002?**  
21 MR. COCHRAN: Between when?  
22 MR. SCHIMMEL: February 2000 and April  
23 2002.  
24 A. Well, once again, just to make sure we're on

17 (Pages 62 to 65)



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1 the same page, everything that's on his computer would  
2 be backed up. Specifically what's on his computer  
3 now, I don't know how much -- I just don't know enough  
4 about how he kept his documents and his electronic  
5 information, if he would say he's going to rely on the  
6 backups and he's a double deleter like I am or if he  
7 saves it all. I honestly have not looked at his  
8 computer  
9 So what's physically on his computer. I  
10 don't know  
11 Q. Do you know if anybody has looked at his  
12 computer to determine what data is available?  
13 A. I don't think so  
14 Q. Do the debtors have in their possession,  
15 custody or control the hard drive of Kieren  
16 Bustamante?  
17 A. Yes, we do.  
18 Q. Do you know if Mr. Bustamante or Mr. Brunette  
19 switched computers after April 2002?  
20 A. Not that I'm aware of  
21 Q. Do the debtors have in their possession,  
22 custody or control the hard drive of Cynthia Eakin?  
23 A. Yes, we do.  
24 Q. Do you know if Ms. Eakin has changed computers

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1 Q. Do you know if  
2 A. Sorry about that  
3 Q. That's okay.  
4 Do you know if at the time Mr. Brunette  
5 got a new computer whatever data was on the old one  
6 was automatically transposed into the new one?  
7 A. That is the typical process.  
8 Q. Do you know whether it happened with respect to  
9 Mr. Brunette?  
10 A. No  
11 Q. Do you know -- let me ask then again the  
12 question for Kieren Bustamante.  
13 A. Right. As far as I know, Kieren has got the  
14 same as me, which is he got the same computer he's  
15 always had  
16 Q. How about Cynthia Eakin?  
17 A. I don't know specifically for Cindy.  
18 Q. How about Bruce Milla?  
19 A. I don't know for Bruce  
20 Q. How about Andre Mongrain?  
21 A. I'm not sure for Andre  
22 Q. Do the debtors have in their possession,  
23 custody or control the computer of Kathy Morgan?  
24 A. Yes, we do

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1 since April 2002?  
2 A. No, I don't. I don't know  
3 Q. Do the debtors have in their possession,  
4 custody or control the hard drive of Mr. Milla?  
5 A. Yes, we do.  
6 Q. Do the debtors have in their possession,  
7 custody or control the computer of Mr. Mongrain?  
8 A. Yes, we do.  
9 Q. Do you know if Mr. Milla or Mr. Mongrain  
10 switched computers after April 2002?  
11 A. I'm sorry. I have to say I have completely  
12 misunderstood your question. I thought you're saying  
13 exchanged between themselves  
14 Is that what you mean?  
15 Q. No. It's a simple question.  
16 A. I'm very sorry. I'm sorry  
17 Q. I may have misspoken.  
18 I want to know whether -- I want to make  
19 sure that whatever information was on their hard drive  
20 as of April 24, 2002 was transposed onto a new  
21 computer.  
22 A. I'm with you now. For all of those -- I know.  
23 for example, John has a non-standard computer. I  
24 don't know when he got it. John Brunette

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1 Q. And would you know whether Ms. Morgan changed  
2 her computer after April 2002?  
3 A. I don't know  
4 Q. Do the debtors have in their possession,  
5 custody or control the computer of Ms. --  
6 A. Sciaciatano  
7 Q. -- Sciaciatano?  
8 MR. COCHRAN: Sciaciatano  
9 A. And that's Sciaciatano, not a-n-o  
10 MR. COCHRAN: Off the record.  
11 (Discussion off the record)  
12 BY MR. SCHIMMEL  
13 Q. So do the debtors have in their possession,  
14 custody or control the hard drive of Ms. Sciaciatano?  
15 A. Yes, we do  
16 MR. COCHRAN: Off the record again  
17 (Discussion off the record)  
18 BY MR. SCHIMMEL  
19 Q. Do the debtors have in their possession,  
20 custody or control the hard drive of Mr. Snyder?  
21 A. Yes, we do  
22 Q. Do you know if Ms. Sciaciatano changed her  
23 computer after April 2002?  
24 A. I don't know if she did or not

18 (Pages 66 to 69)

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1 Q. Do you know if Mr. Snyder changed his computer?  
2 A I'm almost sure that Mr. Snyder has not.  
3 Q. I take it you have your hard drive?  
4 A Yes, I do.  
5 Q. And you have not changed your computer?  
6 A No.  
7 Q. Now, with respect to the other individuals on  
8 that list, do the debtors have in their possession,  
9 custody or control the hard drives of those  
10 individuals?  
11 MR. COCHRAN: Individuals on what list?  
12 MR. SCHIMMEL: On Exhibit 5.  
13 A Oh, Exhibit 5? No, we do not have all of  
14 these.  
15 Q. Do you have any of them?  
16 A Well, just going down the list, Brunette we  
17 have, Bustamante we have, Eakin we have, Milla we  
18 have, we have Mongrain, we have Morgan, we have  
19 Sciaciatano, we have Snyder. I think that's  
20 everyone.  
21 Q. Why don't you have the other hard drives?  
22 A Well, some of these people are at the Cerberus  
23 entity, so they would have taken their hard drives  
24 with them

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1 employees of Teleglob. So, for example, a good  
2 example is Mark VanDoorn. I'm not sure when Mark  
3 left, but whenever he did the standard procedure would  
4 be he would back up his tapes and then his computer  
5 would be returned to the IT department and I don't  
6 know specifically what they did with it, other than it  
7 would be redeployed back out into the Teleglob work  
8 force.  
9 I don't know. We could go name by name,  
10 but that's just an example.  
11 MR. COCHRAN: Off the record.  
12 (Discussion off the record.)  
13 (Mr. Shaw left the deposition room at  
14 11:55 a.m.)  
15 BY MR. SCHIMMEL:  
16 Q. When the computer was redeployed, was the hard  
17 drive wiped out?  
18 A I don't know.  
19 Q. Was there a standard procedure in writing about  
20 what would happen when the computer was returned to  
21 the IT department?  
22 A I don't know.  
23 Q. Who would know that?  
24 A Someone in the IT department

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1 Q. Who would those be?  
2 A Well, I'll just say the ones that I know.  
3 Daniel Bergeron I know is at Cerberus. Daniel  
4 Cinq-Mars is at Cerberus.  
5 Those are the only two that I see.  
6 Q. Before Mr. Bergeron or Mr. Cinq-Mars left to go  
7 to Cerberus, did the debtors make any effort to copy  
8 their hard drive?  
9 A And other than the standard procedure that we  
10 annunciate in our disclosures and in the e-mail  
11 default standards?  
12 Q. And by that you mean backup tapes?  
13 A Yes.  
14 Q. Other than the backup tapes, did the debtors  
15 make any effort to make a copy of those hard drives  
16 before those people left?  
17 A Not that I'm aware of.  
18 Q. Why not?  
19 A I don't know.  
20 Q. Is your answer complete?  
21 A Yes.  
22 Q. How about the other individuals on the list for  
23 whom you don't have hard drives?  
24 A Well, some of these individuals are former

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1 Q. And that would be Mr. Wolfe or no one?  
2 A Maybe Mr. Wolfe.  
3 Q. Well, who else in the IT department can we ask?  
4 A If you're talking about present employees, yes,  
5 Mr. Wolfe is the only IT employee.  
6 Q. Is there any other person that you can think of  
7 who would know whether there was a written procedure  
8 regarding what happens to a computer when it's  
9 returned to the IT department?  
10 A None off -- no.  
11 Q. Would the standard procedure be when you return  
12 the computer to the IT department it's redeployed to  
13 someone else with the old information in the computer  
14 or something happens to it?  
15 A I don't know specifically.  
16 Q. You have no idea as you sit here today?  
17 A No.  
18 Q. When the computer of Mr. VanDoorn was returned  
19 to the IT department, what efforts did the debtors  
20 make to copy the information on the hard drive?  
21 A I don't know.  
22 Q. Do you know if any effort was made?  
23 A Well, he left in 2001, sometime in 2001, so  
24 whatever the standard procedure was

19 (Pages 70 to 73)

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1 Q. Do you have the hard drive of Mr. Pichette?  
2 A. As far as I know, no.  
3 Q. Why not?  
4 A. I don't know why not.  
5 Q. Do you know what happened to the computer of  
6 Mr. Pichette when he left Tele globe?  
7 A. No, I don't know.  
8 Q. Has there been any investigation of what  
9 happened to his computer when he left Tele globe?  
10 A. I know that we looked for it.  
11 Q. Where did you look?  
12 A. We looked in his offices.  
13 Q. Did you look anywhere else?  
14 A. I know we looked on the sixth floor of  
15 Tele globe.  
16 Q. Was any instruction given to Mr. Pichette as to  
17 what he was supposed to do with his computer when he  
18 left Tele globe?  
19 A. I don't know.  
20 Q. Who would know that?  
21 A. John Brunette.  
22 Q. Have you ever discussed with Mr. Brunette  
23 whether Mr. Pichette was given any instruction about  
24 his computer?

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1 A. No, I don't know if we have ever talked about  
2 that.  
3 Q. Have you ever talked to Mr. Brunette about  
4 Mr. Pichette's computer?  
5 A. That I'm not sure I can answer because I  
6 believe that gets into my work product problem.  
7 Q. Have you --  
8 MR. COCHRAN: I guess that's an objection  
9 with regard to work product.  
10 Would you like to consult to determine  
11 whether you can answer Mr. Schimmel's --  
12 THE WITNESS: Do you mind if we go outside  
13 just for --  
14 MR. COCHRAN: Let me finish my statement.  
15 If you would like to consult to determine  
16 whether you can indeed answer Mr. Schimmel's question  
17 without revealing work product, I'm happy to talk to  
18 you about that.  
19 THE WITNESS: Okay.  
20 MR. SCHIMMEL: Sure.  
21 (The witness and Mr. Cochran left the  
22 deposition room for a brief period of time.)  
23 MR. COCHRAN: Having reviewed the matter  
24 with Mr. Cooke and having considered your question, we

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1 don't think that question calls for work product, nor  
2 do we think the response will tend to reveal work  
3 product, so I will let him answer.  
4 THE WITNESS: Okay. I'm sorry. Could you  
5 read the question back to me?  
6 (The reporter read back the pending  
7 question.)  
8 MR. COCHRAN: So the question is have you  
9 ever talked to Mr. Brunette about Mr. Pichette's  
10 computer?  
11 THE WITNESS: And the answer is yes.  
12 BY MR. SCHIMMEL:  
13 Q. When?  
14 A. It would have been after Patrick left.  
15 Q. Do you know how long after he left?  
16 A. It would have been shortly after he left  
17 because we were looking for his computer.  
18 Q. Before Mr. Pichette left, was anybody  
19 instructed to make a copy of the computer?  
20 A. Specifically -- other than the general backup  
21 procedures that we would be using for all employees at  
22 Tele globe as set forth in the default standards.  
23 Q. Why would you be looking for his computer if  
24 all the information was on the backup tapes?

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1 A. Well, this was a human deal where people would  
2 leave with their equipment and so we were trying to  
3 make sure that -- that we had the same problem with  
4 Serge Fortin. The executives typically had more  
5 expensive computers and I think we just wanted to make  
6 sure they didn't get out of our hands, quite candidly.  
7 Q. That's the reason you were looking for it?  
8 A. Yes.  
9 Q. Before Mr. Pichette left, was any effort made  
10 to confirm that whatever was on his computer was on  
11 the backup tapes?  
12 A. I don't know.  
13 Q. Did you ever instruct anybody to check that?  
14 A. I did not.  
15 Q. Why?  
16 MR. COCHRAN: I object to form.  
17 A. Specifically to the -- I wasn't aware Patrick  
18 Pichette was going to leave.  
19 MR. SCHIMMEL: Do you want to take a lunch  
20 break until 1:00 o'clock?  
21 MR. COCHRAN: Whatever you would like to  
22 do.  
23 MR. SCHIMMEL: That's fine.  
24 MR. COCHRAN: Stay on the record for one

20 (Pages 74 to 77)

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1 moment.  
2 You're moving on from the January 31, 2005  
3 letter, I guess. I sent you an e-mail last night with  
4 reference to the January 31, 2005 letter and I don't  
5 know if you have seen it.  
6 MR. SCHIMMEL: I have seen your e-mail.  
7 MR. COCHRAN: You have.  
8 MR. SCHIMMEL: I have not seen the  
9 follow-up list of --  
10 MR. COCHRAN: I just want to make sure you  
11 have seen my e-mail of last night with reference to  
12 the January 31, 2005 letter.  
13 MR. SCHIMMEL: Do you have, and I would  
14 like to be on the record, do you have a list of  
15 additional individuals for whom you have --  
16 MR. COCHRAN: I have no further  
17 information at this time, but I just want to make sure  
18 you got that e-mail.  
19 MR. SCHIMMEL: Before we leave, I would  
20 like to understand the scope of the investigation that  
21 was conducted that prompted you --  
22 MR. COCHRAN: You're free to ask  
23 Mr. Cooke.  
24 MR. SCHIMMEL: Well, let me ask Mr. Cooke

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1 A. Correct  
2 Q. And are those the individuals that you listed  
3 before for whom you have hard drives, namely John  
4 Brunette, Kieren Bustamante, Cynthia Eakin --  
5 A. Correct. A subset of that group is listed  
6 here. In other words, there are additional people  
7 that are at the estate. I think this group ties back  
8 into people that have potentially information.  
9 Q. When you say, "this group," you're referring to  
10 Mr. Cochran's letter to me. What sentence exactly are  
11 you looking at in paragraph 11?  
12 A. I'm sorry. On Exhibit 6, page 4 where in the  
13 second line it says, "Brunette, Bustamante, Eakin,  
14 Milla, Mongrain, Morgan, Sciaciatano, Snyder," if you  
15 look over to Cooke Exhibit 5, I think with the  
16 exception of Ms. Sciaciatano -- no. She's on here as  
17 well. There's an identity.  
18 Q. Meaning those people are employed by the estate  
19 today?  
20 A. Employed by the estate and also have the  
21 potential to have discoverable e-data relating to this  
22 case.  
23 Q. Fine. And because they're employed by the  
24 estate today, they have server data available for

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1 right now  
2 MR. COCHRAN: Okay.  
3 BY MR. SCHIMMEL:  
4 Q. Can you explain to me the investigation that  
5 was conducted that led your counsel yesterday night  
6 late to send me an e-mail saying there may be other  
7 individuals who have either hard drive or server data?  
8 MR. COCHRAN: I object to form  
9 A. Yes, which is Mr. Wolfe and I were speaking  
10 yesterday and in looking at this response we realized  
11 that everyone who remains at the estate obviously has  
12 information that's available on the server and that  
13 there are additional, I'm not sure how many, other  
14 individuals where partial information or backup  
15 information has been stored -- I'm sorry -- has been  
16 restored and put back up on the server. And I asked  
17 Mr. Wolfe to tell me how many additional people that  
18 would be  
19 Q. Okay. So let me make sure I understand.  
20 There are about ten people at the estate  
21 today, right?  
22 A. Correct.  
23 Q. So those individuals obviously have data on the  
24 server?

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1 them?  
2 A. Still up on the server, correct.  
3 Q. So you don't have to go to backup tapes for  
4 those individuals?  
5 A. Correct.  
6 Q. Fine.  
7 And what you're saying is in your  
8 discussion with Mr. Wolfe yesterday, you realized that  
9 there are additional individuals who are still  
10 employed by the estate and who may have server data?  
11 A. Correct. Like, for example, myself, right, I  
12 would be included in regard to 11.  
13 Q. Anybody else that you believe should be  
14 included in that group?  
15 A. In the group of people that are still on the  
16 server?  
17 Q. And have discoverable e-data information.  
18 A. Just because I'm on the server doesn't mean I'm  
19 over here (indicating).  
20 Q. That's why I am asking the question. Right. I  
21 understand. I understand. I'm not trying to be  
22 difficult.  
23 A. Right.  
24 Q. People who are employed at the estate today

21 (Pages 78 to 81)

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1 have server data?  
 2 A. Correct.  
 3 Q. Fine.  
 4 A subset of those people are on Exhibit 5  
 5 because you believe that they're senior enough to be  
 6 on Exhibit 5?  
 7 A. Right, or otherwise have information for  
 8 whatever criteria other than seniority might put them  
 9 on the list.  
 10 Q. Right. But do you remember any other criteria  
 11 other than seniority?  
 12 A. I don't specifically, no.  
 13 Q. Fine.  
 14 So who else is still employed at the  
 15 estate and to your knowledge are to be on Exhibit 5?  
 16 A. I'm not aware of anyone else at the estate.  
 17 Q. Other than you --  
 18 A. I don't even think I would meet this  
 19 (indicating). In other words, I was --  
 20 MR. COCHRAN: The record should reflect  
 21 the witness was indicating Exhibit 5 when he said,  
 22 "this."  
 23 A. Right. I don't believe in terms of the issues  
 24 that are raised by the body of this (indicating)

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1 complaint I would be included in discoverable e-data  
 2 Q. Right. And because discoverable e-data would  
 3 go to people who are senior enough or who had an  
 4 ongoing relationship with BCE, for instance?  
 5 A. Or were involved in the transactions referenced  
 6 in the complaint.  
 7 MR. COCHRAN: Let me cut through it for  
 8 you. Mr. Wolfe is investigating at our request to  
 9 give us the identities of additional people who may be  
 10 on the server. Again, we're going to review that list  
 11 and if we need to supplement our representation in  
 12 paragraph 11 we are going to do that.  
 13 Q. Now, there was a second piece in the  
 14 information that Mr. Wolfe gave you yesterday which is  
 15 that there's some individuals whose data was on backup  
 16 tapes that was restored and is today on the server?  
 17 A. Still live on the server, correct.  
 18 Q. Who are those individuals?  
 19 A. That's what he's checking.  
 20 Q. Do you know of any?  
 21 A. Specifically? No, not specifically. I can't  
 22 think of -- let me think if I can think of one.  
 23 I can't because I don't want to misspeak.  
 24 MR. COCHRAN: I make the same

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1 representations to you. Mr. Wolfe is going to dig out  
 2 the information and I will then supplement our prior  
 3 disclosures we will do that for you.  
 4 Q. Now, on Exhibit 5 we have established that  
 5 there's a certain number of individuals who have  
 6 currently data on Tele globe servers, and those are  
 7 Mr. Brunette, Bustamante, Eakin, Milla, Mongrain,  
 8 Morgan, Sciaciatano, Snyder and you have also data on  
 9 the server, even though you're not listed on Exhibit  
 10 5?  
 11 A. Correct.  
 12 Q. Do the other individuals on Exhibit 5 have data  
 13 on the server?  
 14 A. They may.  
 15 Q. Because the backup tapes would have been  
 16 restored?  
 17 A. Correct.  
 18 Q. But other than that, would they have data on  
 19 the server?  
 20 A. Unless they have been restored, they should not  
 21 be on the server, just because of the procedures that  
 22 we follow pursuant to the disclosures we made under  
 23 the default standard.  
 24 Q. Is your answer complete?

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1 A. Yes.  
 2 MR. SCHIMMEL: So let's break for lunch.  
 3 And do you want to reconvene at 1:00?  
 4 MR. COCHRAN: That is fine.  
 5 (Recessed for lunch at 12:10 p.m.)  
 6  
 7 AFTER LUNCH RESESSION  
 8 I'll begin.  
 9 MR. SCHIMMEL: Malcolm, do you object to  
 10 the portion of continuing without local counsel  
 11 present?  
 12 MR. COCHRAN: No. No objection.  
 13 BY MR. SCHIMMEL:  
 14 Q. Mr. Cooke, just going back to some things that  
 15 we discussed before. In 2003 or 2004 did the debtors  
 16 or anyone acting on their behalf issue a memo to any  
 17 person instructing them to preserve documents?  
 18 MR. COCHRAN: Time frame?  
 19 MR. SCHIMMEL: 2003-2004.  
 20 MR. COCHRAN: Thank you.  
 21 A. You mean other than what I have testified to in  
 22 terms of contacting the IT department?  
 23 Q. Yes.  
 24 A. And to the extent that this e-mail

22 (Pages 82 to 85)



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1 2003-2004? Yes 2004? No, not that I'm  
 2 aware of  
 3 (Mr. Shaw reentered the deposition room at  
 4 1:06 p.m.)  
 5 BY MR. SCHIMMEL:  
 6 **Q. At any point in time, other than what you have**  
 7 **described before, did the debtors or anybody acting on**  
 8 **behalf of the debtors issue a document preservation**  
 9 **memo to employees, officers?**  
 10 A Yes  
 11 **Q. What was issued?**  
 12 A We got when the document request came out --  
 13 and I'm not exactly sure what the timing was -- we got  
 14 a memo from counsel directed to all the estate  
 15 employees regarding compliance with the document  
 16 request.  
 17 **Q. What did the memo say?**  
 18 MR. COCHRAN: If you will agree that his  
 19 answer does not waive any attorney-client or work  
 20 product privileges that may apply, I will allow him to  
 21 answer.  
 22 MR. SCHIMMEL: Yes. We're not interested  
 23 in waiving the privilege  
 24 MR. COCHRAN: Pardon?

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1 MR. SCHIMMEL: We're not interested in  
 2 waiving the privilege.  
 3 MR. COCHRAN: So you are in agreement that  
 4 the answer to this question will not waive the  
 5 privilege?  
 6 MR. SCHIMMEL: Yes.  
 7 MR. COCHRAN: Then you can answer.  
 8 A It was just delineating the documents that were  
 9 requested and obviously asking people to search and to  
 10 make sure that obviously anything that was responsive  
 11 or any other documents were not otherwise discarded or  
 12 altered.  
 13 **Q. There are a couple of things in what you said.**  
 14 **Was there in the memo an instruction to preserve**  
 15 **documents?**  
 16 A I don't remember specifically  
 17 MR. SCHIMMEL: I would like you to read  
 18 Mr. Cooke's prior answer, not this one, the one before  
 19 that.  
 20 (The reporter read back as requested.)  
 21 BY MR. SCHIMMEL:  
 22 **Q. And that instruction that any other documents**  
 23 **not be discarded, did it apply to existing documents**  
 24 **and documents to be created on a going-forward basis?**

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1 A. Once again, I don't have it in front of me, but  
 2 I think the general import was, you know, we have got  
 3 to be responsive to these requests and these documents  
 4 are important and they should be maintained and  
 5 compiled because we're going to produce them to the  
 6 other side  
 7 **Q. When was that memo sent to employees and**  
 8 **officers?**  
 9 A. I can't remember. It was obviously after the  
 10 document request was served and it was sometime before  
 11 today  
 12 **Q. So sometime in late 2004 or early 2005?**  
 13 A. Yes  
 14 **Q. To whom was it addressed?**  
 15 A. Specifically, I don't know to whom it was  
 16 addressed, but I know that every member of the estate  
 17 received a copy.  
 18 **Q. What do you mean by "every member of the**  
 19 **estate"?**  
 20 A. Every employee that remains at Telelobe got a  
 21 copy of the memo.  
 22 **Q. So that's about ten people?**  
 23 A. Yes, roughly. It might have been a little more  
 24 because we had people that left at the end of the

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1 year. Ten to fifteen.  
 2 **Q. And from who was the memo?**  
 3 A. I can't remember, other than I believe it was  
 4 from someone at Richards, Layton  
 5 **Q. Why was such a memo not sent before?**  
 6 MR. COCHRAN: I object to form  
 7 A. I don't know  
 8 **Q. Is your answer complete?**  
 9 A. Yes.  
 10 **Q. Were there any discussions in 2002-2003 about**  
 11 **the need to send a document preservation memo to**  
 12 **employees of the estate?**  
 13 MR. COCHRAN: I object to the form.  
 14 A. You mean outside of discussions with counsel?  
 15 **Q. Were there any discussions in 2003 or 2004**  
 16 **about the need to issue a document preservation memo?**  
 17 A. I don't remember. None that come to mind, but  
 18 I don't remember. We might have  
 19 **Q. Would there be any record of those discussions**  
 20 **anywhere with the debtors?**  
 21 A. I don't know  
 22 **Q. Can you describe to me what your**  
 23 **responsibilities were at the debtors after April 24,**  
 24 **2002?**

23 (Pages 86 to 89)

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1 A. At some point I was informed we were going to  
2 file for creditor protection in the United States and  
3 Canada and worldwide. And then basically I was given  
4 the task or the mandate to deal with Canadian and U.S.  
5 bankruptcy counsel to prepare for first day pleadings.  
6 **Q. And after that?**  
7 A. I continued to manage the bankruptcy  
8 proceedings. You know, I was involved in some of the  
9 business affairs of the debtors in terms of  
10 liquidating assets, involved in various litigations  
11 for collection matters. It was, believe me, a myriad  
12 of things. That's a small tip of the iceberg in terms  
13 of what was going on because we had a small number of  
14 bodies trying to do a great amount of work.  
15 **Q. Any other categories of things that you did  
16 that you can remember?**  
17 MR. COCHRAN: I'm sorry. Would you read  
18 that back?  
19 (The reporter read back the last  
20 question.)  
21 THE WITNESS: I had dealings with many of  
22 the receivers overseas. I traveled overseas to have  
23 discussions with them. I'm just trying to think of  
24 some of the extraneous stuff.

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1 That's largely it that I can think of  
2 right as I sit here today.  
3 BY MR. SCHIMMEL:  
4 **Q. Is it fair to say that all of the efforts to  
5 collect and preserve documents and maintain documents  
6 after April 24 of 2002 were under your supervision,  
7 directly or indirectly?**  
8 A. No, not necessarily. There were a number of  
9 people doing very different things. My task was the  
10 bankruptcy. Kathy and John were working on the sale  
11 of the core.  
12 **Q. Kathy is Kathy Morgan?**  
13 A. Kathy Morgan.  
14 **Q. And John is?**  
15 A. John Brunette. So I think there were a number  
16 of people that had vested interests in maintaining  
17 documents and controlling the documents.  
18 **Q. Who other than Kathy Morgan, John Brunette and  
19 you were involved in making sure -- I'm talking at a  
20 supervisory level -- making sure that documents of the  
21 debtors were preserved and maintained?**  
22 MR. COCHRAN: I object to form.  
23 A. I don't know.  
24 **Q. Can you think of anyone?**

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1 MR. COCHRAN: I object to form.  
2 A. No, not specifically.  
3 **Q. Now, Kathy Morgan reported to you, correct?**  
4 A. No. No, she did not.  
5 **Q. To whom did she report?**  
6 A. John.  
7 **Q. You've described the efforts that you made to  
8 tell the people who worked in the legal department to  
9 collect and maintain documents?**  
10 A. Yes.  
11 **Q. You have described that before, right. What  
12 separate efforts did Ms. Morgan or John Brunette do to  
13 collect or maintain documents of the debtors?**  
14 A. I don't know what they did.  
15 **Q. Did you ever discuss with them what they did?**  
16 A. No.  
17 **Q. So as you sit here today, you have no idea  
18 whatsoever?**  
19 A. No.  
20 **Q. But is it fair to say that whatever they did  
21 involved documents pertaining to the sale of the  
22 estate to Cerberus?**  
23 A. I'm sorry. Repeat your question.  
24 **Q. Is it fair to say that what they were involved**

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1 **in involved the sale of the workable part of the  
2 business to a purchaser?**  
3 A. That is probably one of the primary  
4 functions, but I can't speak to specifically what they  
5 were doing and whether it was that limited or not. I  
6 mean, their work would have come after my discussions,  
7 so whether they could have been pursuing my  
8 mandate of preserving and controlling. And whether  
9 they did or not, I don't know. But they were aware  
10 that we were to be controlling and preserving those  
11 documents.  
12 **Q. How were they aware?**  
13 A. Because of the meetings that we had.  
14 **Q. You and them?**  
15 A. Yes. They were in the large meeting.  
16 **Q. When did these large meetings occur?**  
17 A. They occurred daily through the bulk of May of  
18 2002.  
19 **Q. And in those meetings you orally told people  
20 "We need to preserve and maintain documents,  
21 electronic documents"?**  
22 A. Not at every meeting, but there was discussions  
23 on that issue.  
24 **Q. On the issue that you described at the**

24 (Pages 90 to 93)

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1 beginning of this deposition?  
2 A Yes  
3 Q. Did you provide that instruction to people,  
4 what you called a mandate, after May of 2002 or in May  
5 of 2002?  
6 A. It was continuing. Right. Everyone has short  
7 memories, so I can't tell you how often it was done.  
8 But people would call and say, "Is now the time?"  
9 Facilities would call and say, "Is now the time?" I  
10 would be "No. Keep holding everything. Retain  
11 everything."  
12 Q. Why didn't you issue a written mandate to those  
13 employees?  
14 MR. COCHRAN: I object to the form.  
15 Q. With respect to the preservation of documents.  
16 A. I'm not sure if we did or not.  
17 Q. Do you have any file reflecting you did?  
18 A. I do not have a file that reflects that I did  
19 or did not.  
20 Q. To your knowledge, is there any file at the  
21 debtors that would reflect whether you did?  
22 A. I don't know.  
23 Q. Is your answer complete?  
24 A. Yes.

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1 Q. Would someone know better than you?  
2 A. I don't know. If somebody has a file, maybe,  
3 but I'm not aware of anyone that has something like  
4 that, no.  
5 Q. Why didn't you ask the employees who were  
6 working in the legal department to report to you in  
7 writing about their efforts to collect and preserve  
8 documents?  
9 MR. COCHRAN: I object to form.  
10 A. It was a function of the things that were  
11 happening. It was a very hectic time. And it's also  
12 based on my knowledge of their individual  
13 characteristics that I wasn't in a situation where I  
14 felt like I needed to write memos and get memos back.  
15 I felt like I could trust them, that they would  
16 understand what I was saying and ensure compliance.  
17 Q. But you have no idea as you sit here today of  
18 what they did?  
19 A. No.  
20 MR. COCHRAN: I object to form.  
21 Q. Is your answer complete?  
22 A. Yes.  
23 Q. Let's go back to Exhibit 5, if you would.  
24 A. Sure.

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1 Q. I would like to go down the list of the people  
2 for whom you don't have a hard drive.  
3 A. Okay.  
4 Q. Randy Bloxsome. Do you know why you don't have  
5 a hard drive for Mr. Bloxsome?  
6 A. I have to say I do not know who Randy Bloxsome  
7 is, so I have no personal knowledge of who he was or  
8 what he did.  
9 Q. Is your answer complete?  
10 A. If it was responsive, yes.  
11 Q. Why don't you have the hard drive for Marc  
12 Bouchard?  
13 A. I'm not sure I know if we have -- I don't  
14 believe we have a hard drive for Marc Bouchard. I  
15 don't know why we do not.  
16 Q. Did you ever investigate?  
17 A. No.  
18 Q. To your knowledge, did anybody ever investigate  
19 why you don't have a hard drive?  
20 A. I don't know if anyone investigated Marc  
21 Bouchard's hard drive or computer.  
22 Q. Why don't you have a hard drive for Michael  
23 Boychuk?  
24 A. Once again, as I sit here today, I don't know

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1 if we have a computer for Michael Boychuk or not.  
2 Q. Well, your counsel provided us with a list of  
3 seven individuals for whom you have a hard drive.  
4 A. Correct.  
5 Q. So I take it some effort was made to determine  
6 who has and who doesn't have a hard drive at the  
7 debtors? Let me rephrase this question.  
8 I take it some investigation was conducted  
9 to determine who are the individuals with respect to  
10 whom you have a hard drive?  
11 A. And I'm not -- that did not run through me.  
12 The only reason I'm caveating is because we do have a  
13 number of laptops that are left over and we can go  
14 back and check and see if we can determine whose they  
15 are. You can add that.  
16 Q. Where are those laptops?  
17 A. They're in Reston.  
18 Q. Was any investigation ever conducted to see who  
19 were the prior owners of those laptops?  
20 A. I don't know if there was.  
21 Q. Why not?  
22 MR. COCHRAN: Why doesn't he know?  
23 MR. SCHIMMEL: Yes.  
24 MR. COCHRAN: I object to form.

25 (Pages 94 to 97)



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1 A No one asked me to conduct that, but that  
2 doesn't mean it hasn't been done  
3 Q Who would be the point person to conduct such  
4 an investigation, and the investigation being who is  
5 the prior owner of that laptop?  
6 A Those are all held by David Wolfe and I don't  
7 even know how many there are. I just know there are  
8 some  
9 Q Did anybody at the debtors ever ask Mr. Wolfe  
10 "David, find out who is the prior owner"?  
11 A I don't know if they did or not  
12 Q Did anybody ask Mr. Wolfe whether there was any  
13 data on those hard drives, on those laptops?  
14 A I don't know  
15 Q Who would know that?  
16 A David Wolfe.  
17 Q And you don't know if there is any data on  
18 those laptops?  
19 A No, I don't know if there's any data on those  
20 laptops  
21 Q And you don't know if there was data on April  
22 24, 2002 on those laptops?  
23 A No, I don't know  
24 MR COCHRAN: I object to form

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1 A No, I don't  
2 Q Do you know why there's no laptop for Barry  
3 Bunin?  
4 MR COCHRAN: I object to form.  
5 MR SCHIMMEL: Let me rephrase the  
6 question, actually  
7 BY MR SCHIMMEL  
8 Q Do you know why there's no computer or hard  
9 drive for Barry Bunin?  
10 MR COCHRAN: I object to form  
11 A I know Barry had a computer when he left.  
12 Q Where did he go?  
13 A I think he I would be guessing  
14 Q You have no idea where he is?  
15 A I know he's somewhere in the Mid-Atlantic  
16 region, but I don't know if he retired or if he has  
17 got a new job  
18 Q Is there a record at the debtors of where he  
19 might be?  
20 A We would probably have a last known address  
21 I'm not sure if it's current  
22 Q What efforts were made, if any, before he left  
23 to confirm that any data on his computer was actually  
24 on the server?

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1 Q You don't know if any data was subsequently  
2 erased from those laptops?  
3 A No, I don't  
4 Q Would Mr. Wolfe know?  
5 A He may know  
6 Q You just have no idea?  
7 A I have no idea  
8 Q Have those laptops been with Mr. Wolfe since  
9 April of 2002?  
10 A No  
11 Q Can you describe to me how they came to be in  
12 his possession?  
13 A Well, Mr. Wolfe has not continuously been  
14 employed by Teleglobe since April of 2002. There was  
15 a period of time when he left and then he came back  
16 sometime last year  
17 Q That's 2004?  
18 A Yes  
19 Q So really as you sit here today you have no  
20 idea what happened to those laptops between April 2002  
21 and the present?  
22 A No, I have no idea  
23 Q Do you know if the debtors ever had the laptop  
24 for Michael Boychuk?

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1 A Other than what he testified to as being the  
2 default standard?  
3 Q The default standard being the backup?  
4 A Right  
5 Q The backup tapes?  
6 A Correct  
7 Q So other than relying on the backup tapes what  
8 efforts, if any, were made to confirm that the data on  
9 his hard drive was actually preserved on the servers  
10 or the backup tapes?  
11 A I'm not aware of any efforts specifically  
12 Q And I take it your answer is complete?  
13 A Yes  
14 Q How about Mr. Childers, why don't you have a  
15 computer for him?  
16 MR COCHRAN: Childers  
17 A I don't know. I don't know what the status  
18 of his computer is  
19 Q Has there been any investigation?  
20 A Not by me  
21 Q By anybody?  
22 A I don't know  
23 Q Did you ever instruct anyone to try to locate  
24 the computer of Mr. Childers?

26 (Pages 98 to 101)

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1 A. I did not, no.  
2 **Q. To your knowledge, did any person on behalf of**  
3 **the debtors instruct any other person to try to locate**  
4 **the computer of Mr. Childers?**  
5 A. Not to my knowledge.  
6 **Q. Would there be a log at the debtors of what**  
7 **happened to all of those computers?**  
8 A. There may be.  
9 **Q. Who would be in charge of that log?**  
10 A. Well, the only person who is left who might  
11 know about the log is more than likely David Wolfe.  
12 **Q. But you as you sit here today have no idea**  
13 **whether a log was maintained to identify where the**  
14 **computers of all of those custodians are?**  
15 A. I don't know.  
16 **Q. Did you give any instruction to anybody to**  
17 **create such a log, maintain such a log?**  
18 A. I did not, no.  
19 **Q. Did anybody working for you to your knowledge**  
20 **give that instruction?**  
21 A. Are you talking about specifically for  
22 Mr. Childers or are you talking generally?  
23 **Q. No. For any person whose computer has**  
24 **disappeared --**

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1 A. I told you they haven't disappeared.  
2 MR. COCHRAN: I object to form.  
3 A. I will say there should be a record somewhere  
4 of people who bought their computers, should be, but  
5 I'm not sure specifically, but I know that as  
6 employees left they tendered cash and typically got a  
7 receipt. Whether we have that available, I don't  
8 know.  
9 **Q. Who would have the record of who bought their**  
10 **computers when they left?**  
11 A. I don't know who would hold that now.  
12 **Q. You don't know if the record exists?**  
13 A. I don't know specifically if the record  
14 exists.  
15 **Q. But as you sit here today, you cannot confirm**  
16 **whether anybody took any steps to confirm that the**  
17 **data on those computers that were taken by the**  
18 **employees was actually located on the backup tapes or**  
19 **the server?**  
20 MR. COCHRAN: Could you read that back?  
21 (The reporter read back the last  
22 question.)  
23 MR. COCHRAN: I object to the form.  
24 THE WITNESS: Correct.

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1 BY MR. SCHIMMEL:  
2 **Q. And your answer is complete?**  
3 A. Yes.  
4 **Q. Mr. Ashwin Chitamun, do you know why you don't**  
5 **have a computer for him?**  
6 MR. COCHRAN: I object to form.  
7 A. I believe Ashwin left on May 15th. I don't  
8 know if he took his computer with him or not.  
9 **Q. How about Mr. Condon, do you know why you don't**  
10 **have a computer for him?**  
11 MR. COCHRAN: I object to form.  
12 A. I don't know if we do or not. I know he went  
13 back to Bell Canada.  
14 **Q. Just so that we're clear, you have identified**  
15 **in Mr. Cochran's letter to me and before in your**  
16 **deposition the individuals for whom you know you have**  
17 **a computer?**  
18 A. Correct.  
19 **Q. Right. With respect to all of the other**  
20 **individuals on that list, as you sit here today you**  
21 **have no reason to believe you have a computer?**  
22 MR. COCHRAN: I object to form.  
23 A. I don't have a belief one way or the other. I  
24 do know we have additional laptop computers in Reston.

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1 **Q. With Mr. Wolfe?**  
2 A. With Mr. Wolfe.  
3 **Q. So would it be fair to say that if it happens**  
4 **that the computer of those individuals on Exhibit 5**  
5 **are with Mr. Wolfe, you have them but if they are not**  
6 **with Mr. Wolfe in that stack of additional laptops,**  
7 **you don't have them?**  
8 MR. COCHRAN: I object to form.  
9 A. I think we either have them or we don't. And  
10 if they are not with Mr. Wolfe, there are no other  
11 offices that they would be located in.  
12 **Q. Do you know how many computers Mr. Wolfe has?**  
13 A. No, I don't. I know it's some number.  
14 **Q. By "some number," are we talking about five,**  
15 **ten, a hundred?**  
16 A. It would be definitely less than a hundred,  
17 probably less than twenty. I don't know specifically.  
18 **Q. Bill Enns, do you know why you don't have a**  
19 **computer for him?**  
20 MR. COCHRAN: I object to form.  
21 A. No, I don't know.  
22 **Q. Mr. Fortin, do you know why you don't have a**  
23 **computer for him?**  
24 A. Serge was another one where we went looking for

27 (Pages 102 to 105)

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1 his computer. He specifically -- there was some  
2 confusion about where he left it or who he left it  
3 with, but I know that it was disappeared. But where  
4 that went, I have no idea. I know that he's another  
5 one that was on the sixth floor where we made a review  
6 for his computer and could not find it.  
7 Q. When you said disappeared, you annunciated that  
8 term fairly mysteriously. So could you tell me the  
9 circumstances under which --  
10 MR. COCHRAN: I object to that.  
11 Q. -- you discovered that the computer of  
12 Mr. Fortin disappeared?  
13 A. It was just a situation where I think he said  
14 he left it on the sixth floor and we couldn't find it.  
15 Q. And the sixth floor would be in Reston,  
16 Virginia?  
17 A. Correct. The executive offices.  
18 Q. Your understanding as you sit here today is  
19 Mr. Fortin's computer disappeared in Reston, Virginia?  
20 A. That's what we were -- we were told that Serge  
21 left his computer in Reston.  
22 Q. When you say, "we were told," who was told?  
23 A. I don't know who came to me, but somebody came  
24 to me and said, "We can't find Serge's computer."

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1 Q. Do you remember when that was?  
2 A. It was shortly after he left.  
3 Q. Which would be?  
4 A. I can't remember when he left specifically. He  
5 might have left with -- this might be a computer that  
6 he had and then he got another one. I don't know. I  
7 can't remember specifically the timing.  
8 Q. You don't remember who told you that his  
9 computer had disappeared?  
10 A. No.  
11 Q. Is there any record anywhere of discussions  
12 about Mr. Fortin's computer at the debtors?  
13 A. I don't know.  
14 Q. Is there in the legal department to your  
15 knowledge any memo or written document describing the  
16 situation with respect to his computer?  
17 A. Not to my knowledge.  
18 Q. To your knowledge, is there a memo or a  
19 document anywhere else at the debtors' that would  
20 discuss the situation of his computer?  
21 A. Not that I'm aware of.  
22 Q. Mr. Guidi, do you know why you don't have a  
23 computer for him?  
24 MR. COCHRAN: I object to form.

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1 A. No, I don't.  
2 Q. Mr. Guidi left Tele globe in May 2000. Is that  
3 right?  
4 A. Probably. Somewhere in 2000 sometime.  
5 Q. So why do you believe you have e-data for him?  
6 A. We may not. I don't know.  
7 Q. Mr. Jarman, do you know why you don't have a  
8 computer for him?  
9 MR. COCHRAN: object to form.  
10 A. No, I do not.  
11 Q. Was any investigation ever made?  
12 A. Not to my knowledge. And by that I mean I  
13 don't know. I don't know one way or the other.  
14 Q. If someone was looking for the computer of  
15 Mr. Jarman and an investigation was conducted to try  
16 to find out where it is, who typically would be  
17 conducting that investigation?  
18 MR. COCHRAN: object to form.  
19 Q. If you know.  
20 A. I don't know. I would typically be the IT  
21 department's responsibility to maintain control over  
22 the computers.  
23 Q. Do you remember who was the woman who was the  
24 head of the IT department at Tele globe?

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1 A. No.  
2 Q. But that's the woman you met in Canada?  
3 A. The head of the IT department was actually Bob  
4 Callahan, who was in Reston.  
5 Q. And he was the head of the IT department from  
6 what time to what time?  
7 A. I don't know when he joined Tele globe and I  
8 know he was there through the spring of 2002. I don't  
9 know if he was there at the time when we -- I don't  
10 know specifically when he left.  
11 Q. Is there any written document or log that would  
12 describe to us who were the people working in the IT  
13 department in 2002?  
14 A. I don't know.  
15 Q. Is there a human resources department at the  
16 debtors today which would have that information?  
17 A. No. Well, there's no human resources  
18 department at Tele globe any longer.  
19 Q. Are there human resources files at the debtors'  
20 that could reflect who was working in the IT  
21 department in 2002?  
22 A. There are definitely files. I don't know --  
23 I've never looked at them one way or the other, so I  
24 don't know how they're maintained or what they would

28 (Pages 106 to 109)

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1 say  
2 **Q. Do you know if the debtors ever had a computer**  
3 **from Michel Lalande?**  
4 A And when you say, "the debtors," are you  
5 talking about the U.S. debtors?  
6 **Q. Yes, the U.S. debtors.**  
7 A The U.S. debtors? I don't believe the U.S.  
8 debtors would have ever had a computer for Michel  
9 Lalande  
10 **Q. Why not?**  
11 A Because he was employed in Canada.  
12 **Q. By whom?**  
13 A Well, originally he was employed by Telelobe  
14 and then at some point he began work for BCE.  
15 **Q. Do you know if the Canadian debtors would have**  
16 **a computer for Mr. Lalande?**  
17 A I don't know. Presently? Presently, no, I  
18 don't believe they would.  
19 **Q. So if I understand correctly, what you mean is**  
20 **before BCE acquired the controlling interest in**  
21 **Telelobe in November 2000 Mr. Lalande was working at**  
22 **Telelobe, Inc. So what you are saying is perhaps he**  
23 **had a computer at Telelobe at that time. Is that**  
24 **correct?**

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1 A I don't know what Telelobe entity he was  
2 working for specifically and I'm not sure when his  
3 affiliation changed. And I don't know when or what he  
4 did in terms of -- I don't know. You would have to  
5 talk to Michel  
6 **Q. How about Michael Neuman, do you know why you**  
7 **don't have a computer for him?**  
8 A No, I don't know.  
9 **Q. With respect to Mr. Pichette, is there to your**  
10 **knowledge any memo or written document that would**  
11 **describe the situation with his computer?**  
12 MR. COCHRAN: The what of his computer?  
13 MR. SCHIMMEL: The situation with his  
14 computer. Let me clarify.  
15 BY MR. SCHIMMEL:  
16 **Q. You described before that the computer of**  
17 **Mr. Pichette disappeared at some point in time.**  
18 A I don't know if it disappeared or if that was  
19 his BCE computer that he took back to BCE. I don't  
20 know.  
21 **Q. But you described before that you looked for**  
22 **Mr. Pichette's computer and you couldn't find it?**  
23 A Yes  
24 **Q. And you described also that it was an expensive**

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1 computer so you wanted to be able to track it down.  
2 A I believe all of the six floor executives had  
3 upgraded computers  
4 **Q. And Mr. Pichette was one of them?**  
5 A Yes.  
6 **Q. Was there any memo or any written document that**  
7 **would describe what the situation was with respect to**  
8 **Mr. Pichette's computer?**  
9 MR. COCHRAN: I object to the form  
10 A Again by "the situation" you're talking about  
11 the looking? I'm not sure what --  
12 **Q. Very, very broadly, looking for the computer,**  
13 **understanding what happened to it.**  
14 A Not that I'm aware of  
15 **Q. How about Tip Powers, do you know why the**  
16 **debtors don't have a computer for that person?**  
17 MR. COCHRAN: I object to form  
18 A No, I don't know  
19 **Q. How about Miss Runion?**  
20 A Yes, Ms. Runion. No, I have no idea  
21 MR. COCHRAN: I object to form  
22 **Q. How about Mr. Verge?**  
23 MR. COCHRAN: The same objection.  
24 A I do not know.

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1 **Q. Why you don't have a computer for him?**  
2 MR. COCHRAN: Same objection  
3 A Correct  
4 **Q. And Mr. VanDoorn, you explained earlier that**  
5 **his computer was returned to the IT department and**  
6 **redeployed, to the best of your understanding:**  
7 A That's what would typically have happened for  
8 the people that left back in 2001. Whether that  
9 specifically happened for him, I don't know  
10 **Q. Do you have a computer for Christina Gold?**  
11 A No  
12 **Q. Why not?**  
13 A Christina Gold worked for Excel, which was  
14 not -- which was a separate entity  
15 **Q. So she would have no connection and no**  
16 **information relevant to this case?**  
17 A I don't know about that.  
18 **Q. Do you have any reason to believe she may have**  
19 **discoverable information relevant to this case?**  
20 MR. COCHRAN: I'm sorry. Could you read  
21 that back? Mr. Schimmel dropped his voice and I  
22 didn't hear the last half of the question  
23 (The reporter read back the last  
24 question )

29 (Pages 110 to 113)

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1 MR COCHRAN: I think you can answer that  
2 question with a yes or a no, but other than that there  
3 may be a work product issue  
4 THE WITNESS: Right.  
5 I don't know. It's possible.  
6 BY MR SCHIMMEL:  
7 Q. Do you know if she had access to any Teleglobe  
8 server while she was working at Excel?  
9 A. I don't know. I don't know.  
10 Q. Who would know that?  
11 A. Well, I don't know who would know. David Wolfe  
12 is a likely source.  
13 Q. That would be the only person who would know  
14 today?  
15 A. Today or someone who was managing her account  
16 at Excel. I don't know if she was on the Montreal  
17 servers or not.  
18 Q. How about Mr. Seguin, do you have a computer  
19 for him?  
20 A. I don't know.  
21 Q. Do you have any reason to believe you have a  
22 computer for him?  
23 A. I have to say I don't know who he is, sadly. So  
24 he's one who I have no knowledge of.

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1 Q. How about Mr. Bourbonnais, do you have a  
2 computer for him?  
3 MR COCHRAN: Who?  
4 THE WITNESS: That's Andre Bourbonnais  
5 A. Andre is another one who left at or about the  
6 time of the merger.  
7 Q. What merger?  
8 A. The merger with BCE.  
9 Q. That's November 2000?  
10 A. Approximately. He left I believe right in that  
11 time frame.  
12 Q. So --  
13 A. I don't know what they did with his computer.  
14 Q. Do you know if you have a computer for Derek  
15 Burney?  
16 A. I don't know who he is.  
17 If you don't mind, can I just take a quick  
18 break? Is that all right?  
19 Q. Sure.  
20 (A brief recess was taken.)  
21 MR SCHIMMEL: Mark this  
22 (Cooke Deposition Exhibit No. 7 was marked  
23 for identification.)  
24 MR SCHIMMEL: This is going to be 8

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1 (Cooke Deposition Exhibit No. 8 was marked  
2 for identification.)  
3 BY MR SCHIMMEL:  
4 Q. I am showing you what's been marked as Exhibit  
5 8 and Exhibit 7. Exhibit 8 is the debtors' initial  
6 disclosures pursuant to Federal Rule of Bankruptcy  
7 Procedure 7026 and Federal Rules of Civil Procedure  
8 26(a).  
9 Mr. Cooke, have you seen this document  
10 before?  
11 A. I'm sorry, I'm talking about Exhibit  
12 No. 8?  
13 Q. Yes.  
14 A. Yes, I have.  
15 Q. Did you review this document before it was  
16 served?  
17 A. This one? Yes.  
18 Q. Did you review it for accuracy?  
19 A. Yes.  
20 Q. If you look at page 7 of this document.  
21 A. Yes.  
22 Q. It talks about Claude Seguin, CFO of TI,  
23 Director of TUSA, TMI, TSI and TTC.  
24 Do you see that?

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1 A. Yes.  
2 Q. Does it refresh your recollection as to who  
3 Mr. Seguin is?  
4 A. Yes, although I don't know him.  
5 Q. Do you know whether the debtors ever had a  
6 computer for Mr. Seguin?  
7 A. I do not know.  
8 Q. Now if you will look at Exhibit 7, it is a  
9 letter from Brock Creschin of Richards, Layton to  
10 George Wade and I'm directing your attention to  
11 footnote 1 of that letter on page 2.  
12 And I would like to ask you whether you  
13 have computers with respect to some of these  
14 individuals and if you don't, why.  
15 A. Okay. I'm looking at footnote 1. I know we  
16 have computers for  
17 MR COCHRAN: Why don't you let him ask  
18 the question?  
19 Q. Why don't you tell me who you have computers  
20 for? That might be easier.  
21 A. Kathy Morgan, John Brunette, Kieren Bustamante,  
22 Cindy Eakin, Dan --  
23 As to the other, I don't know one way or  
24 the other.

30 (Pages 114 to 117)

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1 **Q. If you don't have a computer for them, you have**  
 2 **no idea why?**  
 3 A I do not, no.  
 4 MR. COCHRAN: I object to the form of the  
 5 last question.  
 6 **Q. Do you know who at the debtors would know why**  
 7 **you don't have a computer for any of these**  
 8 **individuals?**  
 9 MR. COCHRAN: Same objection  
 10 THE WITNESS: I'm sorry. What was the  
 11 question?  
 12 (The reporter read back the last  
 13 question.)  
 14 THE WITNESS: No, I don't know who would  
 15 know  
 16 BY MR. SCHIMMEL:  
 17 **Q. Let me just go down the list to be a little bit**  
 18 **more specific.**  
 19 **I take it you don't know whether you have**  
 20 **a computer for Derek Burney?**  
 21 MR. COCHRAN: Who?  
 22 A. I'm trying to find his name here. Where is it?  
 23 Can you direct me to a line?  
 24 Oh, Derek Burney?

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1 **Q. Yes.**  
 2 A. I personally do not know who Derek Burney is.  
 3 **Q. Do you know whether the debtors have in their**  
 4 **possession, custody or control the computer of**  
 5 **Mr. Deforges, D-e-f-o-r-g-e-s?**  
 6 A. Jacques Deforges? Is it on the same -- the  
 7 next line down? I do not know who Jacques Deforges  
 8 is, personally.  
 9 **Q. Do you know if the debtors have in their**  
 10 **possession, custody or control a computer for**  
 11 **Mr. Ducharme, D-u-c-h-a-r-m-e?**  
 12 A. I do not know.  
 13 **Q. Do you know who he is?**  
 14 A. No, I don't.  
 15 **Q. Do you know if the debtors have in their**  
 16 **possession, custody or control a computer for Helen**  
 17 **Fields?**  
 18 A. No, I don't.  
 19 **Q. Do you know who she is?**  
 20 A. Yes, I do.  
 21 **Q. Who is she?**  
 22 A. She worked in the legal department. She's an  
 23 attorney  
 24 **Q. Of?**

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1 A. Of Telelobe  
 2 **Q. Did she report to you?**  
 3 A. No. She reported to Kathy Morgan  
 4 **Q. How would we go about figuring out whether the**  
 5 **debtors have a computer for her?**  
 6 MR. COCHRAN: What's the question again?  
 7 (The reporter read back the last  
 8 question.)  
 9 MR. COCHRAN: Do you need to consult  
 10 regarding a matter of privilege?  
 11 I object to form  
 12 THE WITNESS: We would ask David Wolfe.  
 13 You know, I think we will go back and look at the  
 14 computers that are left and see if any of them relate  
 15 to any of these people. I'm happy to do that.  
 16 BY MR. SCHIMMEL:  
 17 **Q. Do you know if the debtors have the computer**  
 18 **for Michael Hainsfurther, H-a-i-n-s-f-u-r-t-h-e-r?**  
 19 A. I do not know.  
 20 **Q. Do you know who he is?**  
 21 A. No.  
 22 **Q. Do you know if the debtors have in their**  
 23 **possession, custody or control the computer of Tom**  
 24 **Hope?**

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1 A. No, I don't.  
 2 **Q. Do you know who he is?**  
 3 A. Yes, I do.  
 4 **Q. Who is he?**  
 5 A. He's with Bell Canada.  
 6 **Q. Was he employed by the debtors at any point**  
 7 **between 2000 and April of 2002?**  
 8 A. I know he was doing work for Telelobe.  
 9 **Q. In Reston?**  
 10 A. I know specifically I think he did work in  
 11 Reston but other places as well.  
 12 **Q. What kind of work did he do for Telelobe?**  
 13 A. Well, specifically I dealt with him in The  
 14 Netherlands regarding the European build-out, the  
 15 status of the European network.  
 16 **Q. Why did you deal with him?**  
 17 A. It was a litigation issue.  
 18 **Q. In connection with the litigations that you**  
 19 **handled for Telelobe worldwide before April 24, 2002**  
 20 **did the issue of a document retention policy ever come**  
 21 **up?**  
 22 A. I think you asked me that but, no, it did not.  
 23 **Q. Did anybody mention to you in form or substance**  
 24 **the term document retention policy before April 24,**

31 (Pages 118 to 121)



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1 2002?  
2 MR COCHRAN: I object to the form  
3 A Yes  
4 Q Who?  
5 A John Brunette  
6 Q What did he say?  
7 A He said we need to develop one  
8 Q When did he say that?  
9 A We were doing a book of corporate policies at  
10 the time, spring of 2002  
11 Q Spring of 2002 meaning what? Before April 24,  
12 2002 or after?  
13 A I don't remember when we sat down and had that  
14 meeting, but everyone was given the task of coming up  
15 with corporate policies  
16 Q Do you know if it was before BCE announced the  
17 termination of its long-term funding?  
18 A Yes It would have been before that  
19 Q So Mr. Brunette instructed you to prepare a  
20 document retention policy, right?  
21 A I don't know if we were preparing it or  
22 updating it, but we discussed a document, you know,  
23 coming up with a document retention policy  
24 Q When you say, "updating it," was there a

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1 Chuck...  
2 A Tievsky  
3 Q Tievsky?  
4 A He's regular and legal affairs  
5 Q Did he work in the legal group?  
6 A Yes, he did  
7 Q Under your supervision?  
8 A No These were all direct reports of John's  
9 Q What was the title and responsibilities of  
10 Victoria Fortuna?  
11 A Yes. She was employment, labor law.  
12 Q What was the title and responsibilities of  
13 Kieren Bustamante?  
14 A He was corporate. No. No. Or commercial or  
15 both. I'm not sure. Have that right  
16 Q What does that mean?  
17 A He would have handled the sales contracts and  
18 large transactions  
19 Q What was the title and responsibilities of  
20 Kathy Morgan?  
21 A She was corporate  
22 Q Specifically what in corporate?  
23 A M & A, sales, corporate control, all of  
24 those issues

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1 document retention policy before that?  
2 A I don't know  
3 Q Did you, in fact, develop a document retention  
4 policy per Mr. Brunette's instruction?  
5 A I did not specifically  
6 Q Did anybody?  
7 A I don't know if there was one or not  
8 Q Is your answer complete?  
9 A Yes  
10 Q You have never seen one?  
11 A I don't believe I ever saw it, no.  
12 Q In that meeting where Mr. Brunette said we need  
13 to develop a document retention policy, who else was  
14 present?  
15 A All of the Reston direct reports of  
16 Mr. Brunette  
17 Q So who would they be?  
18 A You would have had Chuck Tievsky. You would  
19 have had Victoria Fortuna. You would have had Kieren  
20 Bustamante. And you would have had Kathy Morgan and  
21 myself  
22 That's I believe the list that I can  
23 remember  
24 Q And what was the title and responsibilities of

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1 Q And you were in charge of litigation worldwide?  
2 A Yes  
3 Q Who of those people would have been the point  
4 person to prepare a document preservation policy?  
5 MR COCHRAN: I object to the form  
6 Q During the ordinary course of business who  
7 would have prepared it?  
8 MR COCHRAN: I object to form.  
9 A You mean at that time, are you talking about at  
10 that meeting?  
11 Q Either way  
12 MR COCHRAN: I object to form.  
13 A I don't know if Tele globe had formally come up  
14 with a policy, but I think asked all of us to come up  
15 with various policies and procedures and we were  
16 working on that collectively. So ultimately all of  
17 us were responsible for creating all of the policies.  
18 Q Did you ever see a draft of a document  
19 preservation policy after that meeting with  
20 Mr. Brunette?  
21 A I can remember having done that before, but I  
22 don't know if I did it for Tele globe or not. I don't  
23 know in what state those policies were at the time  
24 Q Of the individuals that you've listed here,

32 (Pages 122 to 125)

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1 **Chuck Tievsky, Ms. Fortuna, Kieren Bustamante, Kathy**  
 2 **Morgan and yourself, who to your knowledge would have**  
 3 **been the natural person to do the first draft of the**  
 4 **document preservation policy?**

5 MR. COCHRAN: I object to form.

6 A. I believe John asked me to do the initial  
 7 draft.

8 Q. That's your recollection?

9 A. That's my recollection.

10 Q. Did you do it?

11 A. I can't remember if I did it or not. I have  
 12 done quite a few of them.

13 Q. Sorry?

14 A. I have done many of those.

15 Q. Of those what?

16 A. Document retention policies.

17 Q. In your --

18 A. Private practice.

19 Q. -- prior life as a lawyer?

20 A. Yes.

21 Q. The policies that you worked on when you were  
 22 an attorney, what did they require people to do,  
 23 generally?

24 MR. COCHRAN: First I object to the form

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1 the documents or not destroying the documents

2 So I can't think that there's a model

3 Each one is different and it depended on the company

4 and the type of business they were in and many, many  
 5 alternatives

6 Q. Did those policies address the obligation to  
 7 preserve documents once a lawsuit is filed?

8 MR. COCHRAN: Objection to the form. The  
 9 same instruction.

10 A. I can't remember if they did or not.

11 Q. Do you remember if those policies addressed  
 12 what should happen once a company became on notice of  
 13 a claim?

14 MR. COCHRAN: Same objections.

15 A. I don't remember.

16 Q. But you do remember working on a number of  
 17 document retention policies in your private practice?

18 A. Yes.

19 Q. And you never did one for Telelobe?

20 A. I can't remember if I did or not. I can't  
 21 remember what the status was at the time.

22 Q. Would it be in your file if you had one, if you  
 23 had prepared one?

24 A. In like a hard copy file? Maybe.

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1 You can answer to the extent that you are  
 2 able to do so without revealing attorney-client  
 3 privileged information.

4 Q. I'm not asking you to reveal attorney-client  
 5 information and I'm not asking about any client in  
 6 particular that you represented at that time.

7 I'm trying to understand you said that in  
 8 your private practice you worked on document retention  
 9 policies, right?

10 A. Mm-hmm.

11 Q. So what I am trying to figure out is what was  
 12 under those policies the expectation when a company  
 13 becomes on notice of the existence of a claim, what  
 14 are you supposed to do with documents?

15 MR. COCHRAN: I object to form.

16 And to the extent that the question calls  
 17 for you to divulge client confidences, you are advised  
 18 that there's a potential attorney-client privilege  
 19 issue.

20 A. Right. And for each client obviously each  
 21 assignment is different and largely what you're really  
 22 talking about in terms of document retention policies,  
 23 the ones that I worked on were how long you keep  
 24 different documents and how you go about destroying

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1 Q. Would it be in your computer?

2 A. Possibly.

3 Q. Do you know one way or the other whether you  
 4 have in your computer or your paper files a copy of  
 5 any document retention policy you prepared  
 6 Telelobe?

7 A. No, I don't know.

8 Q. You never looked after April 24, 2002?

9 A. Not specifically, no.

10 Q. And why not?

11 MR. COCHRAN: I object to the form.

12 A. I don't know.

13 Q. Is the answer complete?

14 A. Yes.

15 Q. Did any of the document retention policies you  
 16 worked on in your private practice describe that it's  
 17 okay to have oral communications with people about  
 18 their retention of documents?

19 MR. COCHRAN: The same objection and same  
 20 caution.

21 A. I don't specifically remember any of those  
 22 policies.

23 Q. Did you have any understanding when you were in  
 24 private practice of a litigant's legal obligation to

33 (Pages 126 to 129)



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1 **preserve documents after notice of a claim?**  
2 A: Yes, I have seen that.  
3 **Q. And what was your understanding?**  
4 A: Generally, once you're in the situation of  
5 litigation you want to make sure that documents that  
6 are relevant are not going to be discarded or  
7 destroyed.  
8 **Q. Explain to me how you satisfied that obligation**  
9 **after April 24th, 2002**  
10 MR COCHRAN: I object to form  
11 A: It would be the same that I testified before.  
12 **Q. Which is?**  
13 A: On the electronic, I went up and determined how  
14 we were storing and compiling our electronic backup  
15 systems and instructed them not to delete or to  
16 destroy any of those tapes or overwrite them.  
17 And on the documents, specifically other  
18 than instructing our legal group to make sure that  
19 everyone was maintaining the files I can't think of  
20 anything else.  
21 **Q. Is your answer complete?**  
22 A: Yes.  
23 **Q. And when you were in private practice did you**  
24 **have an understanding of what the law required in**

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1 Oh, then it is.  
2 A: Where is it?  
3 MR COCHRAN: It is underneath Helen Fields.  
4 A: No, I don't.  
5 **Q. Do you know who C. Normand is, N-o-r-m-a-n-d?**  
6 A: I'm sorry. What is he? Is he on this list?  
7 **Q. Carmand Normand, C-a-r-m-a-n-d, and then the**  
8 **family name is N-o-r-m-a-n-d. He's on the list three**  
9 **lines from the bottom.**  
10 A: Oh, I'm sorry. I don't.  
11 **Q. Do you know who Gregory S. Oliver is?**  
12 A: No, I don't.  
13 **Q. Do you know who Charles Sirois is?**  
14 A: Generally.  
15 I'm sorry. That's a pending question?  
16 **Q. Do you know if you have a computer for**  
17 **Mr. Sirois?**  
18 A: I do not know.  
19 **Q. And I take it either it's in the stack of**  
20 **computers that happens to be with Mr. Wolfe or there**  
21 **is none?**  
22 A: Yeah. I would be fairly likely because, again,  
23 he's a Canadian. I think he was even an  
24 employee.

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1 **terms of how to communicate to employees the legal**  
2 **obligation to preserve documents?**  
3 MR COCHRAN: I object to the form.  
4 A: No, not specifically.  
5 **Q. Is your answer complete?**  
6 A: Yes.  
7 **Q. I would like to continue going down that list.**  
8 **Do you know who Francois Laurin is,**  
9 **L-a-u-r-i-n?**  
10 A: No, I don't specifically know who he is.  
11 **Q. Do you know who Andrea LeBlanc is?**  
12 A: No, I don't know.  
13 **Q. Do you know who Bernard LeDuc is?**  
14 A: No.  
15 **Q. Do you know who T. Allen McArtor is?**  
16 A: No, I don't.  
17 **Q. Do you know who C. Edward Medland is,**  
18 **M-e-d-l-a-n-d?**  
19 A: No, I don't.  
20 **Q. Do you know who Marvin Moses is?**  
21 A: No, I don't.  
22 **Q. Do you know who Robert Mowat is, M-o-w-a-t?**  
23 MR COCHRAN: That's not a name on the  
24 list so far as I see it.

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1 **Q. Do you know who Dave Southwell is?**  
2 A: Yes, I do.  
3 **Q. Who is he?**  
4 A: He works at the bridge.  
5 **Q. Did he have any involvement with Tele globe?**  
6 A: Yes, he did.  
7 **Q. What was his involvement?**  
8 A: He was working with Mr. Hope.  
9 **Q. Do you know if the debtors have a computer for**  
10 **Mr. Southwell?**  
11 A: No, I do not.  
12 **Q. Stewart Guthrie, do you know who that person**  
13 **is?**  
14 A: You mean that Stewart?  
15 **Q. Yes.**  
16 A: Yes, I do.  
17 **Q. Who is that person?**  
18 A: He is a former Tele globe employee.  
19 **Q. Do you know if the debtors have in their**  
20 **possession, custody, or control a computer for him?**  
21 A: I do not. Also, once again, I would be  
22 surprised because he is on the Canadian side.  
23 **Q. Do you know Kenny Troutt?**  
24 A: Yes, I do.

34 (Pages 130 to 133)

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1 Q. Do you know if the debtors have in their  
 2 possession, custody or control a computer for him?  
 3 A No, I do not  
 4 Q. And the last one, John and his last name is  
 5 Z-r-n-o, do you know that person?  
 6 A I do not  
 7 MR SCHIMMEL: Why don't we take a  
 8 five-minute break?  
 9 (A brief recess was taken )  
 10 BY MR. SCHIMMEL:  
 11 Q. Mr. Cooke, from what you said before you  
 12 understood that as of May 15, 2002 a lot of employees  
 13 were leaving Teleglobe, right?  
 14 A Yes That's correct  
 15 Q. And you understood the obligation to preserve  
 16 paper and electronic documents, right?  
 17 A Yes  
 18 Q. So tell me all the steps that you took to make  
 19 sure that any data on the hard drive would be  
 20 preserved other than asking that backup tapes be  
 21 maintained.  
 22 A Right I specifically took no steps other than  
 23 what I have already described to you  
 24 Q. And what you have described to me involved the

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1 backup tapes, correct?  
 2 MR. COCHRAN: Objection to form.  
 3 A Yes On the electronic side, yes  
 4 Q. What steps did you take to ensure that the  
 5 documents on the servers, both e-mail and file  
 6 servers, were preserved other than the backup tapes  
 7 that you described?  
 8 A Other than the backup tapes, I believe those  
 9 are the only steps that I took.  
 10 Q. And did the debtors, apart from you, take any  
 11 steps?  
 12 A I don't know what steps, if any, were taken  
 13 other than the ones that I personally took care of.  
 14 Q. Were you ever engaged in litigation either in  
 15 private practice or at Teleglobe where document  
 16 preservation became an issue?  
 17 A Not that I can remember.  
 18 Q. Do you remember in the litigations that you  
 19 were involved in in private practice or at Teleglobe  
 20 how the obligation to preserve documents was  
 21 communicated to people, employees, officers,  
 22 directors?  
 23 THE WITNESS: I'm sorry Could you repeat  
 24 that question?

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1 (The reporter read back the last  
 2 question )  
 3 MR. COCHRAN: To the extent that the  
 4 question -- well, first of all, it's objectionable as  
 5 to form  
 6 Secondly, the response to the question  
 7 could involve attorney-client confidences and to the  
 8 extent that it does, you're advised that there's a  
 9 privilege that may apply.  
 10 THE WITNESS: I guess in terms of my  
 11 simple answer it would be preservation of documents  
 12 per se I'm not sure -- when you say, "preservation,"  
 13 it's as if they are going to disappear And I guess  
 14 at Teleglobe I mean typically I would contact the  
 15 relevant people in a case and say I want all of your  
 16 documents.  
 17 So in terms of preservation, I mean it  
 18 would really be more an effort at collection and  
 19 retrieval.  
 20 BY MR. SCHIMMEL:  
 21 Q. And on other litigations that you were involved  
 22 in in private practice how was the obligation to  
 23 preserve documents conveyed, if it was?  
 24 MR. COCHRAN: Same objection and same

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1 instruction  
 2 Q. If it was.  
 3 MR. COCHRAN: It's objectionable as to  
 4 form, number one  
 5 Number two, to the extent that it involves  
 6 confidential attorney-client communications, there may  
 7 be a privilege that applies  
 8 A I'm just trying to think of a case specifically  
 9 where that arose I mean, typically we would just be  
 10 in contact with a contact at the company and we would  
 11 go out and either we would pull or they would pull the  
 12 relevant documents and we would review them.  
 13 So, once again, I guess it presumes  
 14 preservation was an issue And I'm not sure that I  
 15 ever specifically remember a situation where I was  
 16 focused on preservation in that sense  
 17 Q. You don't remember in your practice, either  
 18 private practice or at Teleglobe ever telling people  
 19 to preserve documents as opposed to collect documents?  
 20 MR. COCHRAN: I object to form  
 21 A No, not specifically.  
 22 Q. Is your answer complete?  
 23 A Yes  
 24 Q. What, if anything, did you do to be able to

35 (Pages 134 to 137)

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1 prove that your instructions to people at Tele globe  
2 were followed with respect to the collection of  
3 electronic documents and paper documents?  
4 MR. COCHRAN: I object to form  
5 A I wasn't trying to prove anything, but I did  
6 send when I had the meeting with the IT people. I sent  
7 the follow-up e-mails. And, like I say, whether Chris  
8 sent an e-mail or not or I sent it out. I can't  
9 remember.  
10 Q. Your answer is complete?  
11 A. That's the best of my memory.  
12 Q. And the e-mails that you were just referring  
13 to, the one that went to the IT department in Canada,  
14 those were following your meeting in the summer of  
15 2002?  
16 A. Yes. It would have been after I came back.  
17 Q. Do you remember if it was one e-mail or several  
18 e-mails?  
19 A. I think it was a couple because we had some  
20 questions about backup and how it was going to work.  
21 Q. Do you still have those?  
22 A. I don't know if I do or not.  
23 Q. Do you remember this morning I showed you  
24 paragraph 7 of your affidavit which talked about the

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1 A. Well, I think just the way it worked is  
2 different sections of the company had policies that  
3 they were accountable for and those  
4 division heads would ultimately be held accountable.  
5 And legal would have some specific policies that were  
6 legal obligations that would be in their bailiwick.  
7 So it just depended on the specific policy you're  
8 speaking about.  
9 Q. The one that is referred to in paragraph 7 of  
10 your affidavit which I believe refers to the backup of  
11 server data, correct?  
12 A. Yes. Well, I had to do daily with retention  
13 of backup tapes.  
14 Q. That's what's covered by paragraph 7 of your  
15 affidavit?  
16 A. That's what I was thinking of as I looked at  
17 this.  
18 Q. And in terms of the retention of backup tapes,  
19 was any person responsible for monitoring compliance?  
20 MR. COCHRAN: I object to form.  
21 A. I don't know who should have been responsible.  
22 Q. Were you?  
23 A. Well, this would have been an IT -- when I look  
24 at this, this is an IT department policy, which I

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1 company policies in place prior to April 2002?  
2 A. Correct.  
3 Q. Was anybody in charge of monitoring compliance  
4 with those policies?  
5 MR. COCHRAN: Is there humor here  
6 Mr. Schimmel?  
7 MR. SCHIMMEL: No.  
8 MR. COCHRAN: Then why are you laughing?  
9 Maybe we could approach this in a more regular way.  
10 BY MR. SCHIMMEL:  
11 Q. Mr. Cooke, was anything done to monitor  
12 compliance with the policies that are described in  
13 paragraph 7 of your affidavit?  
14 MR. COCHRAN: Objection to form.  
15 A. I'm not sure what people did in terms of  
16 complying with company policies.  
17 Q. Was any person to your knowledge in charge of  
18 monitoring compliance?  
19 A. Not specifically, no.  
20 Q. Based on your knowledge of Tele globe, do you  
21 have any sense of who would have been responsible for  
22 monitoring compliance with company policies, if anyone  
23 ever was?  
24 MR. COCHRAN: I object to form.

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1 didn't formulate it. That's the way  
2 they were operating. It was only when I changed  
3 that policy I would say you would say that I was  
4 responsible. But other than sending the e-mails, I  
5 wasn't up there every period of days checking to make  
6 sure they were doing it. I just assumed it would be  
7 done.  
8 Q. And other than sending those e-mails in the  
9 summer of 2002, did you do anything between February  
10 2000 and the present to monitor compliance with  
11 Tele globe's or the doctors' policy with respect to the  
12 retention of backup tapes?  
13 MR. COCHRAN: I object to form.  
14 A. Yes. Yes.  
15 Q. What did you do?  
16 A. Well, I would have to get calls from the IT  
17 group asking me if I could continue. I will say  
18 there was a period where I ascertained that after  
19 Cerberus had taken over but before they had  
20 completed the acquisition they had started again to  
21 overwrite the tape. And at the time I again instructed  
22 them that they were not allowed to do that. And then  
23 we put the Recall tapes directly under my control  
24 along with L & Y also under my control.

36 (Pages 138 to 141)

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1 Q. When did Cerberus restart the overwriting of  
2 backup tapes?  
3 A. I don't know when it was. Sometime in the fall  
4 of 2002.  
5 Q. And when did the overwriting stop again?  
6 A. I don't know how long it went on. But I can  
7 tell you within a matter of days after learning it we  
8 had taken control of the Recall account, "we" the  
9 estate.  
10 Q. Do you know roughly for how long the backup  
11 tapes were being overwritten before you became aware  
12 of it?  
13 A. I do not, no.  
14 Q. Are we talking about several months, several  
15 weeks?  
16 A. Honestly, I don't know. But I don't believe it  
17 was more than a month because they had not taken  
18 control of the enterprise. If they took control in  
19 late October, November, I knew I learned about it in  
20 2003 -- I'm sorry -- 2002.  
21 Q. You learned in 2002 that for some time the  
22 practice of overwriting backup tapes had resumed?  
23 A. I learned that after Cerberus had taken control  
24 of the operating Teleglobe company that they had for

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1 Q. Are we also talking about the backup tapes that  
2 were located in the United States?  
3 A. We had control over -- there were two sets of  
4 tapes. Some were in the United States. Some were in  
5 Montreal. We had already taken control of the U.S.  
6 tapes and they are today physically located in our  
7 offices. There are additional tapes that are located  
8 in Baltimore, but these were tapes that were  
9 maintained in Montreal at Recall, which is a company.  
10 Q. Recall is a company?  
11 A. Yes.  
12 Q. What is the company called Recall? What work  
13 does it perform for the debtors?  
14 A. It's like an Iron Mountain. It maintains  
15 documents and electronic tapes typically. Like Iron  
16 Mountain, they're all over.  
17 And I believe in Montreal they only held  
18 electronic tapes. I'm not sure in the U.S. if they  
19 had tapes plus documents for us.  
20 Q. The debtors used the company called Recall both  
21 in Canada and the United States?  
22 A. Yes, we did.  
23 Q. When was Recall retained?  
24 A. I don't know when

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1 cost reasons I understood started to overwrite the  
2 tapes again.  
3 Q. How did you learn that?  
4 A. Somebody called me, I believe.  
5 Q. Do you remember who?  
6 A. No, I don't.  
7 Q. Do you remember whether there's any e-mail or  
8 paper trace indicating that somebody had told you that  
9 the practice of overwriting backup tapes had resumed?  
10 A. I don't know if there would be a record or not.  
11 Q. Did you send an e-mail back to any person  
12 instructing them not to overwrite backup tapes?  
13 A. I don't know how they did it, but I know I  
14 responded immediately.  
15 Q. How did you respond?  
16 A. In the same day. It's one where I would likely  
17 call the people.  
18 Q. Did you follow up with a written instruction?  
19 A. I may have. But I know what did follow  
20 immediately was we rebooked the Recall account like  
21 within two days or less into the estate's name solely.  
22 Q. And we're talking about the backup tapes that  
23 were located in Canada?  
24 A. Yes.

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1 Q. Was it prior to April 24th, 2002?  
2 A. Yes.  
3 Q. Is there a contract?  
4 A. Yes, there is.  
5 Q. A contract that reflects the retention of  
6 Recall?  
7 MR. COCHRAN: Could you repeat the  
8 question or read back the question?  
9 MR. SCHIMMEL: Let me just rephrase the  
10 question.  
11 BY MR. SCHIMMEL:  
12 Q. Is there a contract between Recall and  
13 Teleglobe?  
14 MR. COCHRAN: You mean the debtors?  
15 Q. Mr. Cooke, I understand that Recall was hired  
16 before the bankruptcy.  
17 A. Recall had a preexisting relationship with I  
18 believe it was in the name of the Canadian entities.  
19 When we learned about this development with Cerberus  
20 we retitled, we executed a new contract with them for  
21 tapes both in Montreal and in the U.S. and I believe  
22 that was in the debtors' name.  
23 Q. Was Recall prior to April 24, 2002 the company  
24 that was in charge of storing backup tapes for the

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1 Telelobe entities in Canada?  
2 A Yes.  
3 Q So to the extent there were backup tapes in  
4 Canada, they were stored with a company called Recall?  
5 A That's very common, yes. You don't store them  
6 on site. There's large amounts of data and they have  
7 to be maintained at a certain temperature.  
8 Q With respect to the tapes that were stored in  
9 the United States, were they also stored by the  
10 company called Recall?  
11 A Yes.  
12 Q Where were they stored in the United States?  
13 A There's a repository, a facility in Maryland  
14 somewhere.  
15 Q Is that the facility in Baltimore that you just  
16 talked about?  
17 A I don't know if both sets were in Baltimore. I  
18 don't know.  
19 Q Did the Telelobe entities keep backup tapes on  
20 site, either in Canada or the United States?  
21 A There would be some number of tapes that would  
22 be on site until they were shipped to Recall.  
23 Q I would like you, Mr. Cooke, to look at the  
24 debtors' disclosure. I would like to focus your

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1 existence as of April 14, 2002.  
2 A Right. Specifically, I have no knowledge.  
3 other than I have been informed this was our policy.  
4 Q By whom were you informed?  
5 A Most recently, I think Wolfe.  
6 Q And before that?  
7 A I don't know who that person. I don't know if it  
8 was at that meeting or before. I don't  
9 remember.  
10 Q June of 2002?  
11 A Yes.  
12 Q So you're talking about the meeting in Canada?  
13 A Yes.  
14 Q Reading the policy that's described in  
15 paragraph 3a of the disclosures, is it fair to say  
16 that as of April 24, 2002 the debtors should have had  
17 monthly backup tapes for the period April 2001 through  
18 April 2002?  
19 MR. COCHRAN: I object to the form.  
20 THE WITNESS: I'm sorry. Would you repeat  
21 that question?  
22 (The reporter read back the last  
23 question.)  
24 THE WITNESS: I don't know specifically,

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1 attention on paragraph 3a.  
2 I take it that paragraph 3a of Cooke  
3 Exhibit 4 describes, among other things, the retention  
4 practice for backup tapes of e-mail servers, right?  
5 A That is correct.  
6 Q And very generally speaking, I understand that  
7 at any given point in time the procedure or the  
8 practice was to have a year's worth of monthly backup  
9 tapes.  
10 A (The witness nodded.)  
11 Q Is that a yes?  
12 A That is correct.  
13 Q Six months worth of weekly backup tapes?  
14 A Yes.  
15 Q And two weeks worth of daily backup tapes?  
16 A Yes.  
17 Q So as of April 24, 2002 can you describe as  
18 best you can what backup tapes of the e-mail server  
19 should have existed?  
20 MR. COCHRAN: I object to the form.  
21 A I can only respond that it should be in  
22 accordance with this provision set forth in 3a.  
23 Q I understand that. I'm just trying to figure  
24 out what should have been under the policy in

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1 but I mean the disclosure and set forth  
2 BY MR. COCHRAN:  
3 Q I'm trying to understand what the disclosure  
4 means in practice as of a particular date.  
5 A And as of a particular date, I honestly can't  
6 tell you, other than what's set forth here in the  
7 disclosure. I don't prepare this.  
8 Q Well, do you have an understanding, forgetting  
9 for a second what's written in 3a, do you have an  
10 understanding of, placing yourself at a point in time,  
11 what monthly backup tapes should have been available  
12 under the policy?  
13 MR. COCHRAN: I object to the form.  
14 A I do not have an understanding, other than  
15 what's set forth here. I would be guessing as to  
16 whether - in other words, we have those January 2001  
17 tapes. I don't know if they are daily, monthly or  
18 weekly backup. I don't know.  
19 All I know is I can ask them to go back to  
20 2001 and they can provide me that. My level of  
21 knowledge is not that level of detail.  
22 Q Understood.  
23 Now, tell me then as of April 24, 2002  
24 what was, in fact, available.

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1 A I can't tell you that because I don't know how  
2 far back they went before January 2001 at that time.  
3 I don't know the speed at which they were writing over  
4 old data, but clearly it went back before January 2001  
5 at that time  
6 Q. So what you're saying is as of April 24, 2002  
7 you had backup tapes for at least the period January  
8 2001 through April 24, 2002?  
9 A Yes. That's my understanding  
10 Q. And as you sit here today, you don't know if  
11 those are monthly backup tapes, weekly backup tapes or  
12 daily backup tapes?  
13 A Or maybe a combination of all three. I do not  
14 know.  
15 Q. Is there a log that would reflect what the  
16 debtors have in their possession? Let me rephrase.  
17 Is there any document that would indicate  
18 to us what the debtors had in their possession,  
19 custody or control in terms of backup tapes as of  
20 April 24, 2002?  
21 MR COCHRAN: 2002?  
22 MR SCHIMMEL: Yes  
23 A I don't know.  
24 Q. Who should we ask to find that out?

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1 A I believe it would have to be David Wolfe  
2 Q. Do you know why the policy that is described in  
3 3a was, in fact, not followed?  
4 MR COCHRAN: I object to form.  
5 A I don't know if it was followed or not.  
6 Q. Well, 3a states "The retention period for  
7 e-mail backups was six months for end-of-week backups,  
8 12 months for end-of-month backups, and 2 weeks for  
9 end-of-day backups. As a matter of practice (and not  
10 policy) many e-mail backup tapes were not reused,  
11 resulting in the current availability of a substantial  
12 volume of backup tapes."  
13 Do you see that?  
14 A Yes, I do  
15 Q. So my question is: I understand that as of  
16 April 24, 2002 there should have been a year's worth  
17 of monthly backup tapes, six months worth of weekly  
18 backup tapes and two weeks worth of daily backup  
19 tapes. And I understand your disclosure says as a  
20 matter of practice that policy was not followed.  
21 So my question is why?  
22 MR COCHRAN: I object to form.  
23 A Okay. I'm sorry  
24 THE WITNESS: Would you repeat that

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1 question?  
2 (The reporter read back the last  
3 question )  
4 THE WITNESS: Okay. And I think I've  
5 talked about this before, but I'll go back, which was  
6 my understanding originally was that Teleglobe never  
7 ever overwrote electronic tapes. And there was a  
8 period in the fall of 2001, and I don't know when, it  
9 might have been earlier, it might have been later, but  
10 there were cost controls that were put on Teleglobe  
11 And these tapes are -- I don't know -- \$600 each or  
12 something and you need many, many, many tapes every  
13 day to back up daily, weekly, monthly  
14 And so there was a change where the IT  
15 department began to overwrite old tapes and my  
16 understanding was they went back to whenever they had  
17 the last tapes and started to rewrite over them. And  
18 that occurred from sometime in 2001, late 2001 until  
19 the time in 2002 when I sat down with the Montreal  
20 people and told them to stop, which would account for  
21 the reason why we had tapes that go back more than  
22 twelve months, if that's what you're asking.  
23 BY MR. SCHIMMEL:  
24 Q. Yes, that's exactly what I was asking.

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1 So the policy that is described in 3a was  
2 a policy that was put in place in late 2001?  
3 MR. COCHRAN: I object to form.  
4 Q. The policy of overwriting backup tapes?  
5 A The policy of overwriting old backup tapes  
6 have occurred before then, but my understanding was it  
7 did start to occur more regularly at that time  
8 Q. In late 2001?  
9 A Late 2001.  
10 Q. Now, I understand from the disclosures and now  
11 I'm asking you to look at 3b, 3b suggests that the  
12 same schedule existed with respect to file servers,  
13 but the last sentence of 3b says, "File Server backup  
14 tapes were re-used upon expiration."  
15 Does that suggest that, in fact, the  
16 schedule was followed with respect to the file  
17 servers?  
18 A I don't know  
19 Q. Do you know why the debtors' disclosure  
20 indicates a different practice with respect to the  
21 retention of backup tapes of e-mail servers and file  
22 servers?  
23 A I don't know if it's different or not  
24 Q. Who would know that?

39 (Pages 150 to 153)



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1 A I believe the people who worked on this  
2 primarily were David Wolfe and Diane Barrasso, so I  
3 would have to probably go back to one of the two of  
4 them and ask them specifically because this is  
5 slightly beyond my technical expertise  
6 Q Do you know how many backup tapes of e-mail  
7 servers existed as of April 24, 2002?  
8 A No, I don't.  
9 Q Is there any document or log that could provide  
10 that information?  
11 A I don't know  
12 Q Who would we ask?  
13 A We could talk to the IT people that were there,  
14 once again David Wolfe.  
15 Q You believe Mr. Wolfe would have that  
16 information?  
17 A I don't know if he would or not  
18 Q And if he doesn't have the information, do you  
19 know who would have it?  
20 A No, I don't  
21 Q And I take it you don't know how many backup  
22 tapes of the e-mail servers were available as of May  
23 28, 2002?  
24 A No.

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1 Q Do you know how many backup tapes of e-mail  
2 servers exist today for the period let's say early  
3 2001 through May 28, 2002?  
4 THE WITNESS: Okay Can you read that  
5 back to me?  
6 (The reporter read back the last  
7 question )  
8 THE WITNESS: That I believe we could  
9 determine at least for the U.S. servers  
10 BY MR. SCHIMMEL:  
11 Q How could you determine that?  
12 A We have an index that's date by date that  
13 correlates to the tape  
14 Q Is that the catalog?  
15 A Yes I think it's referred to in here  
16 Q Would you look at 5c?  
17 A Thank you.  
18 Q Is that what you're referring to?  
19 A Yes That is what I am referring to  
20 Q 5c states "The catalog of data for what tapes  
21 were used for which backups was lost, except with  
22 respect to e-mail servers in the USA," right?  
23 A Correct  
24 Q So what you are saying is with respect to the

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1 e-mail servers in the USA. you could tell us how many  
2 backup tapes you have for the period let's say --  
3 A From January 1st to the end of  
4 Q How about with respect to the backup tapes of  
5 the file servers, could you tell us how many tapes you  
6 have covering the period February 2000 through May  
7 2002?  
8 A For the file servers I don't believe we can  
9 Q Why?  
10 A Because I think we lost the data or it's not  
11 accessible  
12 Q What data have you lost?  
13 A The data of these file catalog is  
14 electronic. It's just on the e-mail servers we  
15 have a hard copy of it  
16 Q Of the catalog?  
17 A Of the catalog  
18 Q So you're saying that it is not possible to  
19 determine how many backup tapes you have with respect  
20 to the file servers for the period of time let's say  
21 February 2000 through May 2002?  
22 MR. COOKE: I object to form  
23 A I don't believe I can tell you how many  
24 total tapes we have or I can't do it in slices

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1 Q How many tapes do you have?  
2 A Oh, I'm sorry I don't. Of the file servers  
3 in total I don't know  
4 Q Yes.  
5 A I don't know very well. It's at least  
6 9,000  
7 Q And as you sit here today, your testimony is  
8 there's no way to figure out the period of time to  
9 which those tapes correspond?  
10 MR. COOKE: I object to form  
11 A No. My testimony was that I could not tell you  
12 inside a specific time period how many tapes I have.  
13 Q So you would have to restore all of the tapes  
14 to figure out how many tapes you have that correspond  
15 to that period of time, February 2000 to May 2002?  
16 MR. COOKE: I object to form  
17 A I don't know how I would do it specifically  
18 Q Is there any person who would know?  
19 A I'm sure there is someone that one I don't know  
20 who that would be  
21 Q How many tapes of the e-mail servers do you  
22 have for the period let's say February 2000 through  
23 May 2002?  
24 A I would have to go back and see I don't know

40 (Pages 154 to 157)

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1 how many off the top of my head.  
2 **Q. Can you find out that information?**  
3 A. I don't know if -- that's not how our catalog  
4 is kept. I know that we have approximately 2,000  
5 tapes, electronic tapes in Reston and, once again, I  
6 believe those are 2001 to date. So it would be some  
7 subset of that.  
8 **Q. And for those you have a catalog?**  
9 A. Yes.  
10 **Q. Who was in charge of preserving the catalog**  
11 **with respect to the tapes that were in Reston?**  
12 A. I don't remember who it was. It was one of our  
13 IT guys as we shrunk.  
14 **Q. Who was in charge of preserving the catalog**  
15 **with respect to the tapes in Canada?**  
16 A. That was maintained by our IT group in  
17 Montreal.  
18 **Q. Under the supervision of the woman whose name**  
19 **you don't remember?**  
20 A. I don't know if it was a woman or if it was  
21 Roger or if it was someone else. I don't know.  
22 **Q. What steps did you take to ensure that the**  
23 **catalogs of backup tapes would be preserved?**  
24 MR. COCHRAN: I object to form.

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1 A. I personally? I personally didn't take any  
2 steps to maintain the catalogs.  
3 **Q. What steps did the debtors take to preserve,**  
4 **make sure that the catalogs were preserved?**  
5 A. I don't know. But clearly somebody took that  
6 action in the e-mail servers for the U.S. It wasn't  
7 me. I don't know who did that.  
8 **Q. And you have no idea of what steps, if any, the**  
9 **debtors took to preserve the catalogs that are in**  
10 **Canada?**  
11 MR. COCHRAN: I object to form.  
12 A. No, I don't.  
13 **Q. Do you know if any steps were taken?**  
14 MR. COCHRAN: Same objection.  
15 A. No, I don't.  
16 **Q. Do you know who would know?**  
17 A. Not as I sit here today, no.  
18 **Q. Do you know when the catalogs were lost?**  
19 MR. COCHRAN: I object to form.  
20 A. No, I don't.  
21 **Q. When you met with the IT people in Canada, did**  
22 **you have any discussions about the catalog of backup**  
23 **tapes?**  
24 A. No. I have to say I did not talk about

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1 catalogs.  
2 **Q. Did you have any discussion with them to make**  
3 **sure that you would be able to know what tapes were**  
4 **available?**  
5 A. No, not specifically.  
6 **Q. Why not?**  
7 A. I don't know why not.  
8 MR. COCHRAN: I object to form.  
9 A. I didn't. I just told them stop, you know,  
10 stop overwriting.  
11 **Q. I believe you mentioned that there are about**  
12 **9,000 tapes in Canada?**  
13 A. No. There's more than that.  
14 **Q. How many tapes are there in Canada?**  
15 A. In Canada I would say sixteen to 20,000 tapes.  
16 **Q. Is it possible for you to determine which tapes**  
17 **correspond to the period February 2000 through May**  
18 **2002?**  
19 A. I don't know if it's possible. I do know that  
20 the catalog for that data is not currently available.  
21 You would have to ask someone else in terms of whether  
22 it could be reconstituted.  
23 **Q. Who would we ask to determine whether it could**  
24 **be reconstituted?**

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1 A. I don't know who you would talk to.  
2 **Q. Who would you talk to?**  
3 A. I would talk to somebody who does that.  
4 **Q. Have you talked to anybody who does that?**  
5 A. Well, I do know that as part of the interim  
6 receiver role Kroll has used some of those tapes, but I  
7 don't know how they did it.  
8 **Q. When you say Kroll has used some of the tapes,**  
9 **do you mean restored some of the tapes?**  
10 A. Yes, they have restored some of the tapes.  
11 **Q. Is that Kroll in Canada?**  
12 A. Kroll in Canada.  
13 **Q. So that's the interim receiver of Telelobe,**  
14 **Inc.?**  
15 A. Yes, it is.  
16 **Q. Do you know which tapes Kroll has restored?**  
17 A. I do not.  
18 **Q. Who has that information?**  
19 A. Kroll.  
20 **Q. Who is the person at Kroll who would have that**  
21 **information?**  
22 A. I don't know who it would be.  
23 **Q. Do you know the data of which tapes Kroll has**  
24 **restored?**

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1 A I do not  
2 Q Do you know when the tapes were restored?  
3 A It was sometime after Kroll was appointed as  
4 interim receiver, sometime before 2005  
5 Q Do you know how many tapes Kroll restored?  
6 A No  
7 Q Do you know the period of time for which Kroll  
8 has restored tapes?  
9 A No  
10 Q In other words, whether Kroll restored tapes  
11 generated between let's say February 2000 and May 2002  
12 or some other dates?  
13 A I do not know the dates that they have  
14 reviewed  
15 Q Do you know if any search for documents was  
16 conducted after the restoration of those tapes?  
17 A I'm not sure I understand your question  
18 Q Do you know, do you have any idea of what Kroll  
19 did with the tapes once they were restored?  
20 A No I have no communications with Kroll. I  
21 have spoken to them once when they came down to review  
22 materials and have not spoken with them since  
23 Q And I take it that the debtors have restored  
24 some e-mail backup tapes?

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1 A Yes  
2 Q Can you describe to me what e-mail backup tapes  
3 have been restored by the debtors?  
4 A Specifically? No I know that different  
5 people have requested backup tapes to be restored for  
6 various reasons. And we will provide the list of  
7 who's on those servers, who has been restored  
8 hopefully sometime very shortly  
9 Q I would like you to take a look at the letter  
10 written by your counsel on January 31, 2005, again  
11 paragraph 11.  
12 A I'm sorry Is that Exhibit 6?  
13 Q Yes.  
14 A Okay.  
15 Q The last sentence of paragraph 11 says, "Backup  
16 tapes as of January 1, 2004 containing mailbox data  
17 for these six individuals have also been restored."  
18 Do you see that?  
19 A Yes  
20 Q And I believe that the six individuals  
21 mentioned in paragraph 11 are Brunette, Mongrain,  
22 Morgan, Bustamante, Cooke and Sciaciatano?  
23 A Yes  
24 Q Why were those individuals selected for the

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1 restoration of tapes.  
2 MR COCHRAN That question goes beyond  
3 the scope of the deposition under the Rule 30(b)(6).  
4 number one.  
5 And number two to the extent that your  
6 answer would call for us to reveal work product.  
7 there's a privilege that may apply  
8 A I don't know how those six names got picked  
9 Q Did you have anything to do with selecting  
10 those names?  
11 A No, I did not  
12 Q As you sit here today, you don't know why those  
13 six individuals were selected?  
14 MR COCHRAN The same instruction and  
15 same objection  
16 A No Other than privileged information, no  
17 Q Well, are you saying that you don't know why  
18 those six people were selected or that you do know but  
19 it's privileged?  
20 A I know now who selected these six people, but  
21 that's because of the communications with my counsel  
22 Q Do you know why those six people were selected?  
23 MR COCHRAN Yes I'm happy, since this  
24 is the third time you've asked, to consult with him

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1 to determine what is needed to assert a privilege, if  
2 you would like for me to do that  
3 MR SCHIMMEL Sure, if you think you need  
4 to do so  
5 (The witness of Mr. Cochran left the  
6 deposition room for a brief period of time )  
7 MR COCHRAN The witness's specific  
8 information comes through counsel and for that reason  
9 we will assert an attorney-client and work product  
10 objection  
11 MR SCHIMMEL Okay  
12 BY MR. SCHIMMEL  
13 Q Do you know why the date January 1, 2004 was  
14 selected?  
15 A No  
16 Q Do you know the criteria upon which those six  
17 individuals were selected?  
18 MR COCHRAN The same caution as before  
19 with regard to privilege  
20 A No  
21 Q Do you know if any data of Mr. Pichette has  
22 been restored by the debtors?  
23 A At one time Mr. Brunette asked to look at some  
24 of Patrick Pichette's e-mail. Whether those are still

42 (Pages 162 to 165)

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1 up or not, I don't know.  
2 **Q. What did Mr. Brunette specifically ask?**  
3 A I don't know anything more than that  
4 **Q. Who did he ask?**  
5 A He would have asked someone in the IT  
6 department.  
7 **Q. Do you know who?**  
8 A No  
9 **Q. Do you know why he asked?**  
10 A No  
11 **Q. Do you know when he asked?**  
12 A No.  
13 **Q. Do you know if any server data of Mr. Pichette**  
14 **was restored as a result?**  
15 MR. COCHRAN: Was it restored? Was that  
16 your question?  
17 MR. SCHIMMEL: Yes  
18 A I know at the time, whenever that happened, he  
19 did look through, because he came in and told me, he  
20 had seen some Pichette e-mails.  
21 **Q. Do you know if all of Mr. Pichette's available**  
22 **data was restored or simply a portion?**  
23 A I do not know.  
24 **Q. Do you know what data of Mr. Pichette was**

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1 **restored?**  
2 A No.  
3 **Q. Have the debtors asked that the data of**  
4 **Mr. Pichette be restored systematically?**  
5 MR. COCHRAN: To the extent that the  
6 question calls for you to reveal discussions or work  
7 product, discussions with counsel or work product, you  
8 are counseled that there may be privileges that would  
9 apply  
10 MR. SCHIMMEL: It's a yes or no question  
11 MR. COCHRAN: It's the same instruction.  
12 THE WITNESS: I'm sorry. What's the  
13 question?  
14 Would you read it back to me?  
15 (The reporter read back the last  
16 question )  
17 THE WITNESS: Systematically? No. The  
18 only -- John Brunette is the only one that I knew who  
19 has asked for Pichette to be restored.  
20 BY MR. SCHIMMEL:  
21 **Q. For some of Pichette's data to be restored?**  
22 A Some or all. I don't know.  
23 **Q. Well, do you know if all of Mr. Pichette's data**  
24 **has been restored?**

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1 A I do not know.  
2 **Q. Do you know if a portion of Mr. Patrick**  
3 **Pichette's data has been restored?**  
4 A I know at least some portion of his data was  
5 restored.  
6 **Q. Do you know if it comes from the e-mail servers**  
7 **or the file servers?**  
8 A I do not know.  
9 **Q. Do you know if the data, Mr. Pichette's data**  
10 **from the file server is available?**  
11 A All I can say is that we are checking I do  
12 not know today if it is or not.  
13 **Q. Do you know if any server data of Mr. Fortin**  
14 **has been restored?**  
15 A No.  
16 **Q. Why not?**  
17 MR. COCHRAN: Why doesn't he know?  
18 MR. SCHIMMEL: No  
19 BY MR. SCHIMMEL:  
20 **Q. Why hasn't it been restored?**  
21 A I don't know if it has or not.  
22 **Q. If it has been restored or not?**  
23 A I do not know  
24 **Q. You have no knowledge whatsoever?**

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1 A No.  
2 **Q. Do you know if any data of Mr. Verge has been**  
3 **restored?**  
4 A No. I can't remember if it was  
5 **Q. Who would know?**  
6 A I don't know specifically who would know  
7 **Q. Is there any log or document that would reflect**  
8 **whether and the extent to which the data of Pichette,**  
9 **Fortin or Verge has been restored?**  
10 A I don't know I mean, obviously if they are on  
11 the server they have been restored, but beyond that  
12 don't know  
13 **Q. Do you know if they are on the server?**  
14 A No. I don't know.  
15 **Q. Do you know if any server data of Terry Jarman**  
16 **has been restored?**  
17 A No, I don't. I know that John did ask for some  
18 people to be restored The only one I specifically  
19 know he restored was Patrick Pichette. There may have  
20 been others  
21 **Q. Who are the other individuals that Brunette**  
22 **asked that their data be restored?**  
23 A I don't know  
24 **Q. Do you know how many people there were?**

43 (Pages 166 to 169)